

**WHY  
DEMOCRACY**

By JAY WILLIAM HUDSON

WHY DEMOCRACY

THE COLLEGE AND NEW AMERICA

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THE TREATMENT OF PERSONALITY

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# WHY DEMOCRACY

*A Study in the Philosophy of the State*

*By*

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TO  
GEORGE HOLMES HOWISON  
A GREAT EXPONENT  
OF ETHICAL DEMOCRACY



## PREFACE

**T**HIS BOOK has a definite aim and a restricted scope. It does not assume to treat democracy from the standpoint of political science or of economics, but of ethics, and with the purpose of discovering the ethical theory underlying democracy, furnishing it with its justification, so far as it has any. Obviously, the technical details of political and economic democracy and the application of the principles achieved to any actual democracy belong to the experts in these fields, and the author does not care to encroach upon them. If he establishes some of the ethical bases of democracy, together with a few broad and significant corollaries, his modest aim is accomplished. He is convinced that such an ethical awareness of the foundations of democracy is what is most needed now, as the true criterion and motive for any further changes in the structure of present-day democratic institutions.

J. W. H.

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**WHY  
DEMOCRACY**



# WHY DEMOCRACY

## CHAPTER I

### DEMOCRACY IN CONFLICT

#### I

**E**VERY age has its rallying cry, its magic word, which invokes a vision of things to be, commands the loyalty of its leaders, and becomes at last the signature of its triumph or defeat.

For our age, this magic word is Democracy.

What is Democracy?

It has been defined quite variously, most commonly as a political theory, often as an economic program, frequently as an ethical ideal, sometimes as a metaphysics, not seldom even as a religious faith, and occasionally as a state of mind. The accounts of what it is are sometimes precise, often vague, and frequently conflicting. It is popular sovereignty, the rule of the many—the “government of the people, for the people, by the people”; it is “fair play” and the “square deal”; it is “that order in the state which permits each individual to put forth his utmost effort”; its basal concept is Liberty; its basal concept is Fraternity; its basal concept is Equality; it is equality of worth that is meant; it is equality of civil rights at least; it is equality of political rights, too; it is economic

equality; nay, it is social equality also; it is government by the poor; it is Socialism; it is Communism; it is Anarchy in its polite sense; it is the greatest good of the greatest number; no, not this, it is, rather, the great good of everybody; it is man's natural rights expressing themselves through institutions; it is "the progress of all through all under the leadership of the best and wisest";<sup>1</sup> it is the Golden Rule made real; and, recently, whatever else it is, it is something to "make the world safe for."

## II

If democracy has been defined variously, just as variously has it been praised. It is invoked as the hope and guarantee of most modern institutions. Thus, for politics, it is to many the enlightened goal of shifting governmental forms, the apotheosis of justice, a commonwealth of kings, teaching liberty without abuse, the most stable of governments ever devised by man. For education, it is sometimes thought of as the end and criterion of the success of its methods; for economics, as an indispensable part of the solution of some of its most grievous problems, an easing of the perpetual strife between rich and poor; for history, as a fascinating key to the adequate interpretation of human progress; for morals, as the supreme condition of the realization of all the virtues—the heaven of

social organization, where "every man has a chance and knows that he has it";<sup>2</sup> for literature, art, and science, as the ideal forum of their free and perfect expression; for religion, as nothing less than another form of Christianity, the Kingdom of God on earth. And as for its future, we may look forward "with a veritable hope that is stronger than anxiety."<sup>3</sup>

## III

Extravagantly praised is democracy, and just as extravagantly condemned from Plato to now. What a chorus of denunciations arise from all countries and times! What is democracy? It is an "agreeable, lawless, parti-colored commonwealth, dealing with all alike on a footing of equality, whether they be really equal or not";<sup>4</sup> it is the depraved form of government;<sup>5</sup> it is a losing of all historical sense and the by-product of historical accident;<sup>6</sup> in America an abortion since our founders did not intend it;<sup>7</sup> it is the apotheosis of incompetency and ignorance, in emergencies a sorry failure; it is vulgarity and bad manners, commonness of mind and tone, braggadocio and presumption; it is "the flower of moral and intellectual mediocrity"<sup>8</sup> and the death-knell of genius; it is demagoguery, self-seeking, and corruption; it is liberty degenerated into license; it is popular despotism, mob-rule, the tyranny of the majority; it is "an aristocracy of

blackguards";<sup>9</sup> it is "politocracy,"<sup>10</sup> or government by political bosses; it is a breeder of dissension;<sup>11</sup> it is anarchism; it is "everybody sick and everybody a sick-nurse";<sup>12</sup> it is "standardized and commercialized melodrama";<sup>13</sup> it is the "vertigo of the abyss";<sup>14</sup> it "grows rankly up the thickest, noxious, deadliest plants and fruits of all"<sup>15</sup> and it is, yes—even when perfect—"the most shameless thing in the world."<sup>16</sup> As for its future, it is "the most fragile and insecure of governments"<sup>17</sup> and always ends in suicide.<sup>18</sup>

These condemnations of democracy have greatly increased in variety and seriousness during the last twenty-five years, so that, with the "practical extension" of democracy "in the affairs of society it is getting lower theoretical appreciation . . . its defenders never so apologetic; its detractors so aggressive and pessimistic"<sup>19</sup> and, as a result, "to millions of men there has come a deep and bitter disillusionment."<sup>20</sup>

#### IV

A noteworthy fact concerning this multitude of characterizations of democracy, either favorable or unfavorable, is that they are hopelessly conflicting. The praises are sometimes inconsistent with one another and the condemnations are often mutually contradictory. For example, some of the criticisms could be put in pairs, nullifying each other; as:



Democracy means too much personal initiative; democracy destroys personal initiative. Democracy means a universal leveling tendency; democracy, far from reducing all to the same level, actually creates castes.<sup>21</sup> But most of such conflicts, whether of blame or praise, really arise out of the deeper conflicts of preliminary definition. For, although all critics use the same word, "democracy," each conceives its meaning with such shades of difference or with such vagueness that even with the same thinker it signifies now one thing and now another. Thus the criticisms cannot be comparatively evaluated since they do not refer to the same thing; and even what particular species of democracy a specific criticism intends is often a question. For, strange to say, much of the literature of democracy assumes that everybody knows what democracy is; and the sort of thing that everybody assumes he knows is precisely the sort of thing that nobody takes the trouble to put into exact terms. Perhaps it is partly because of this that one authority can assert that there has been no progress in the definition of democracy since 1623, and that vague as it was then, it is vaguer now.<sup>22</sup> "It is a word the real gist of which still sleeps, quite unawakened, notwithstanding the resonance and the many angry tempests out of which its syllables have come, from pen or tongue."<sup>23</sup>

But this vagueness and conflict of definition become intolerable. A conception used so uncertainly

becomes useless; and already a few writers who value precision in social studies have acquired an aversion for the term. In a recent announcement of a new book, a publisher boasts of his author that he "does not accept socialism, or democracy, or any other such catchwords and generalizations."

If it really has come to this—that democracy has degenerated into a mere catchword—it is time to rescue it, difficult as the feat may be, not only for the theoretical reasons heretofore stressed, but for practical reasons as well—the reasons that belong to the world of such values as strongly motivate public procedure. It is not that a mere word—not even the word "democracy"—is of so much practical value; no, not that. But the *thing* called democracy conceivably may be of immense practical worth.

And, granted that democracy may be worth while, the risks of its defeat are great if its deeper meanings cannot be made more definite to the consciousness of those who put their hope in it, yet know not adequately what it is and what its ultimate success implies. "Nothing of any considerable political importance is done or left undone in the United States unless such action or inaction can be plausibly defended on democratic grounds; and the only way to secure for the American people the benefit of a comprehensive and consistent political policy will be to derive it from a comprehensive and consistent conception of democracy." <sup>24</sup>

## CHAPTER II

### THE VAGUENESS OF POLITICAL DEMOCRACY

#### I

THE discovery of the meaning of democracy would appear far less difficult if what we sought were merely a formulation for political democracy, democracy as a kind of government. It is this sense of democracy that is likely to be uppermost in the popular mind. Historically, this is, in the main, the official use of the term, partly because democracy was, at the very first, the name of a political theory, and partly because histories have been so predominantly devoted to political events that the wider and perhaps deeper connotations which the term has gathered have been quite naturally ignored. Further, the largest and most influential body of theorists that deal with democracy, the political scientists, have given the formidable weight of their authority to the exclusively political interpretation of the term. Moreover, this authority is strengthened by an appeal to usage from Aristotle to the present day. Most political scientists would thus agree with Sir Henry Maine's downright assertion that democracy is simply and solely a form

of government and would feel that any definition of democracy other than political earns the undesirable epithets of "mystical" and "transcendental."<sup>1</sup>

Once democracy is restricted to a purely political meaning, its definition is supposed to be fairly simple and also in fully unanimous accordance with historical and contemporary usage. It is neither more nor less than "government by the people." With different writers the words used may differ, but the intent is the same. "Herodotus, in the fifth century B.C., understood democracy to mean the 'multitude's rule. . . .'"<sup>2</sup> Thus, Thucydides: "We are called a democracy, for the administration is in the hands of the many and not of the few." Thus, Cicero: "If, finally, all power is vested in the people, the state is democracy." Thus, Spinoza: "A democracy is the best form of government, recognizing the principle that all powers come from the people." Thus, Lincoln: "A government of the people, for the people, by the people." Thus, Murray's Oxford Dictionary in its first and preferred definition. Thus, Bryce, who uses the word democracy "as denoting a government in which the will of the majority of qualified citizens rules, taking the qualified citizens to constitute the great bulk of the inhabitants, say, roughly, at least three fourths, so that the physical force of the citizens coincides (broadly speaking) with their voting

power.”<sup>3</sup> To pass to the more recent writers, thus, Willoughby: “A government is democratic in character when the determination of the major policies of the State, and the selection of the chief executive officials of its government, are vested in the governed, or, at any rate, in a considerable proportion of them, as, for example, in the adult males of the community.”<sup>4</sup> Thus, Corwin: “The democratic dogma is, of course, the doctrine that the public should rule.”<sup>5</sup> So that Sait is encouraged to say that “with such a clear-cut definition we know how to identify the phenomenon as soon as it appears.”<sup>6</sup>

But, as every logician knows, the purpose of a real definition is not merely to identify a phenomenon, when it appears, but to reveal its essential nature. One can identify an arrival on a train by being told that he will be six feet tall, carry a cane and limp with his left leg; but it reveals nothing fundamental about the nature of the man. Assume that the political definition of democracy is simple; still, it would be stupid to mistake simplicity for precision on the one hand or adequacy on the other. A definition may be simple enough to win ready assent merely because it is sufficiently vague to veil the multitude of radical differences that hide behind it. As soon as such differences emerge, the definition turns out to be all too simple; it has to be qualified to be of either theoretical value or of practical use, and once we begin

to qualify the definition before us, two things speedily become apparent: First, vagueness and inadequacy in even the political meanings of democracy; and, second, the logical necessity to go beyond these merely political meanings, if they are to be clarified.

First, then, let us note the vaguenesses and inadequacies. Some of them will seem a matter of drawing fine distinctions to the point of cavil. The cavil is not intended; the distinctions are. Their exact significance is a matter for further examination.

When political theorists, seeing the barrenness of defining democracy merely as government by the people, attempt to be more precise, they make quite various explications of what they mean. Government by the people is (a) universal suffrage; (b) the rule of the majority; (c) suffrage of substantially all the adults without distinction of sex; (d) suffrage of substantially all adult males. Some, not too fastidious about the matter, give one one's choice, as already seen. But do all these diverse explications signify the same thing? For example, is government by universal suffrage identical with the suffrage of adult males? Adult males who have a right to vote may well be a minority of the people; is the rule by a mere majority of this mere minority the same as rule by the people or rule of the majority? Or, is it intended that there

are degrees of democracy? If so, what is the desirable order of these degrees?

Granted that the right to vote is what is meant by government by the people, is the accordance of the mere right sufficient to constitute a democracy? "Half the potential voters ignore the election and three-quarters ignore the primary."<sup>7</sup> It is quite clear that "a government may be representative in the sense that political rights are widely diffused among the people, and yet its policies may be determined by a few political leaders with the result that, in fact, the popular will exercises little control."<sup>8</sup> Does such a government qualify as a government by the people?

Even if the people have the vote and actually exercise it, is it yet government by the people except in name if they are of a character to vote as they are led, even supposing the leadership to be right? In other words, is self-government really democracy if the people have not the ability to govern, if they cannot arrive at reasoned convictions of their own on significant public issues? Suppose a government directed by enlightened public opinion but with no franchise; would it not be more truly democracy than a government through the franchise of the unenlightened?

Is true democracy the direct rule of the people, or indirect rule through representation? To the average theorist, this is merely a matter of ex-

pediency. To others, more discriminating, it makes a vast difference. When Aristotle condemned democracy, he was thinking of the sort in which the whole number of citizens, acting as one body, directly decided all.

Now, in order to avoid the imputation of taking too carping an attitude and of neglecting the ordinary dictates of common sense, I shall be rash enough to assume that most theorists would answer the majority of the above questions in the following way: There are, indeed, varying degrees of democracy, and this largely accounts for the varying definitions. The least that could be called democracy would be constituted by the suffrage of substantially all the adult males, even if unenlightened and not actually voting. (Query: Suppose it were the suffrage of substantially all the adult females, likewise unenlightened and not voting, the males, enlightened or not, being unenfranchised; would that be democracy?) But let our imaginary theorist proceed: Although this scant minimum would be sufficient to deserve the name of democracy, it would be a better democracy if these males not only had the right to vote, but voted. Better still if these self-governing males were enlightened enough really to vote intelligently. Further, it might or might not be a *better* democracy, but it would be *more* a democracy if the females also had a right to vote, even if they were



unenlightened, and not voting; better if they voted, better still if they were enlightened also. As for the choice between direct and representative democracy, it is, indeed, a matter of circumstance and efficiency. Either is democracy.

But in this examination of the most prevalent political definitions, there arises another group of problems which cannot be solved by the interpretations of common sense no matter how liberal and discerning.

Let democracy be government by the popular will, whether it be the minimum of male wills or the maximum of all adult wills: The question is, how are we to conceive this popular will? Is it merely an aggregate of wills, reached by the summation of individual wills as such, or is it in some sense an organic will, achieved not by merely adding up the individual preferences of each of the many, but by attaining an expression of the social nature of the many? Are the many to be thought of just quantitatively, or qualitatively also? Is democracy a mere mass of atoms, of ballot-projecting units, or a synthetic whole which is not merely an addition of functions but an interrelation and co-operation?<sup>9</sup> Both interpretations of the popular will have been held in various guises. Again supposing a popular will in the sense of a Society over and above the mere individual, is it to be regarded as limiting, perhaps submerging, the freedom of

the individual's will, or as vindicating his freedom, or as even extending the limits of his freedom? Until these questions are answered, the political definition is vague and inadequate. The political definition gives no data for answering them. They can be answered only by going beyond it into some theory of the fundamental nature of man and society, especially with regard to the concept of human rights.

Again, suppose democracy to be government by the people. What are the logical limits of such government? For instance, does political democracy imply economic democracy? If so, in what sense? Does it mean Socialism? Communism? Does it even go beyond economic democracy to other institutions, to social democracy in general? Some think so. The question becomes more urgent when we think of democracy as involving equality or equal rights, another well known slogan of democracy pitifully obscure. Until this question is answered the political definition is unprecise and incomplete; yet, it of itself yields no criterion for a solution. This can be found only by going beyond it into a thorough-going analysis of the widely varying doctrines of human rights.

One more question. Government by the people: What for? Assuming for the moment that the political definition is clear for political purposes, the question remains, *why political democracy at*

*all?* How does one justify it? Is it an end in itself, or a means to a larger end which is its reason for being? The definition does not inform us. The political formulations reviewed seem to be made as if democracy were an end in itself. But if it is, in reality, a means to a further end, surely the nature of that end profoundly affects the definition. At any rate, whether democracy is an end in itself or a means to a further end can be decided only by going beyond the political definition into a study of that larger society of which government, democratic or otherwise, is only one manifestation.

## II

To go beyond the political definition of democracy one is supposed to be lost in vagueness. But of a certainty one is lost in vagueness if one does not. The investigation is forced upon us by the logic of the case. It is not a question, then, of whether or not we shall transcend the political definition; it is only a question of how.

The most natural way is to assume that government is, indeed, a means to an end to which we must look for the needed clarification of its import. As a matter of fact, this way is agreed upon by many influential thinkers, both within and without the field of political science, notwithstanding that a certain group "have registered a vow to convert

political science from a 'normative' or 'telic' science, as it has variously been called, into a natural science."<sup>10</sup> Let us scan a few typical opinions of men whose authority compels respect if not assent.

John Stuart Mill is certain that "government altogether being only a means, the eligibility of the means must depend on their adaptation to the end."<sup>11</sup> In this Bryce, keen analyst of modern democracies, seems to agree when he says that "Popular government has been usually sought and won not as a good thing in itself, but as a means of getting rid of tangible grievances or securing tangible benefits."<sup>12</sup> Corwin, whose standing as a contemporary political scientist is unquestioned, announces as the task of political science, "criticism and education regarding the true ends of the state," and that, "therefore, it must still retain its character as a 'normative' or 'telic' science";<sup>13</sup> while Perry, speaking from another field, philosophy, insists that "The true democracy is considerate not only of present interest, but also of the potentiality and promise of life,"<sup>14</sup> which is to say, with Weyl, that "It is not a state at all, but a mere direction."<sup>15</sup> Among recent philosophers of the law, who involve a philosophy of the state in any adequate view, we find Cohen maintaining that "justice and the law, the ideal and the actual, are inseparable";<sup>16</sup> while Roscoe Pound makes it clear that "A body of au-

thoritative received ideals...are as much a part of the authoritative materials by which justice is administered as are any legal precepts. Indeed the crucial element is usually to be found here.”<sup>17</sup> The practical statesmen who inaugurated the American government were quite certain that it was no end in itself, but a means toward the realization of certain rights, for which, so they unequivocally proclaimed, governments are instituted among men. “The declarations which they made of the rights of man seemed, from their point of view, to be ideals.”<sup>18</sup> Münsterberg, the eminent psychologist, interpreting America to his native land, explains that “the political life of the United States sprang not from reasoned motives, but from ideals; it is not the result of insight, but of will.”<sup>19</sup> Even those who oppose the telic view find it difficult to be consistent. They have sought “to retain scientific status for themselves...at the same time that they have sought to become arbiters of social goals and values.”<sup>20</sup> They are crypto-idealists. Cleave to the static and ateleological conceptions as they may, they still must recognize “that, in constitutional countries, men’s view of what their constitution traditionally is has often been greatly influenced by their view of what it ideally ought to be.”<sup>21</sup>

Let us look at the matter from another angle. Democracy changes. The ancient Athenian democracy was far different from our modern de-

mocracies, both European and American. "The facts about our democracy to-day obviously are not the facts of yesterday, nor are they the facts of to-morrow. The democracy in the United States which De Tocqueville saw in the early part of the nineteenth century is not the American democracy rising to power in the twentieth century." <sup>22</sup> Government, like all institutions, is dynamic, not static. Now, how are we to conceive of these changes? Are they, as some propose to hold, merely temporary adjustments to contemporary conditions? Are we to forget that these contemporary conditions to which government adjusts itself are always chiefly and in the last resort conscious human beings who, in a democracy, themselves institute the adjustments in the name of reform and who approve or condemn these adjustments when made in the same name? Surely, there is such a thing as democratic progress and retrogression! Any statesman assumes it. But progress and retrogression certainly involve a standard by which one may discriminate them. And this standard can only be some goal toward which one advances or from which one recedes. If one insists that this goal is within the definition of political democracy itself and not beyond it, one commits himself to progress merely in the quantitative sense of more and more suffrage, or, at the best, more and more enlightened suffrage. Bryce announces just such a goal, politically circum-

scribed: "In the ideal democracy, every citizen is intelligent, patriotic, disinterested, his sole wish is to discover the right side in each contested issue, and to fix upon the best man among competing candidates. His common sense, aided by a knowledge of the situation of his country, enables him to judge wisely between arguments submitted to him, while his own zeal is sufficient to carry him to the polling-booth." <sup>23</sup> In other words, when every adult votes and is enlightened enough to vote rightly, the last heaven is reached. But such a formalistic notion leaves out the reason for giving anybody at all a vote, and omits any standard by which to judge true from false enlightenment among the voters. They are to be enlightened, that is all. Enlightened for what? For voting? Voting for what? No adequate answer can be found unless one transcends the political machinery, and arrives at some larger end which it serves, which becomes at once the real criterion of political enlightenment and political progress. It is in vain that one is told, you must not compare a system of government with some remote ideal if you are making a practical judgment upon it. If this remote ideal is the true objective of your efforts, you are compelled to judge your governmental system by it and by nothing else, if your judgment is to have the least practical worth.

## CHAPTER III

### BEYOND THE POLITICAL STATE

#### I

**I**F the meaning of political democracy can be clarified only by reference to the end which it serves, the problem at once becomes: What, precisely, is this larger end?

Of course, the readiest answer is this: The end to which political democracy is a means is the larger social order, of which government is one and only one institution, even if the most important. Certainly, such slogans as liberty and equality strongly hint of some definite theory of relations between men involving a definite social structure. Now, some political scientists freely grant that government must adjust itself to society in the sense of the contemporary social realities. But this is not enough unless one realizes that the most influential social reality is not society as it actually *is*, but society conceived as it *ought to be* and is not. Of all the social realities, and amid all their changing forms, this conception is always present and practically most powerful.

Further, it is quite evident that this conception



of an ideal society, however imperfect, is what is known as an *ethical* conception. By common agreement, any study of ultimate values or norms, whether of society or of individuals, belongs within the ethical field. It is not the liberty and equality we have *now* that concerns us most vitally, but the liberty and equality we *ought* to have and may not have unless we struggle for them. Put otherwise, the social ideal is regarded as a social obligation. Once more, it is an ethical conception.

Immediately we are confronted with the objections of those who are convinced that the moment we lay the foundations of democracy in an ideal social order, we become mystics and transcendentalists. But such question-begging epithets throw no light upon the logic of our problem; and, as is already evident, the vagueness is really on the part of those who arrest their logic at the arbitrary limits beyond which alone vagueness can be clarified, if at all. And, after all, to regard government in this larger and ethical sense is no new and startling thing; it is not merely the license of irresponsible innovators, yawpers of meaningless shibboleths. Even Plato and Aristotle treated political theory as the expression of something deeper. Plato's Republic rests upon the foundations of an ethical outlook, and his aversion to political democracy has distinct ethical bases; political democracy is folly only because ethical democracy

is false. Aristotle, who seems to set a precedent for the definition of democracy as political, nevertheless makes his *Politics* the flower and bloom of his *Ethics*. A vast number of modern thinkers are unequivocal in their agreement with this fundamental thesis. To John Dewey's mind, democracy and the ultimate ethical ideal of mankind are synonyms.<sup>1</sup> Weyl is sure that, "in a nation which contains within itself the qualities which make for true democracy . . . the ultimate standard of values, the ultimate sanction, is not legal but moral."<sup>2</sup> Professor Perry insists that government always "exists by virtue of the good that it does."<sup>3</sup> Sloane strikes the ethical motive when he says that, "as an ideal to-day, it [democracy] is sovereignty residing in the whole people, for the good of the whole people."<sup>4</sup> Professor Seth is certain that "the ultimate sanction and measure of political obedience is found in the ethical value of the State as the vehicle of the personal life of its citizens."<sup>5</sup> Many writers on the philosophy of the State, appearing recently in increasing numbers, either assert or imply an ethical foundation for government, and a considerable proportion of those seeking an adequate justification for law find it only in ethical guarantees. Dean Pound, discussing the ultimate basis of law, says, "We have to do with a phase of the theory of values. The attempt of the nineteenth century to divorce jurisprudence, and hence law and Inter-

national Law, from all consideration of morals, has proved futile in every connection." <sup>6</sup> Professor Cohen agrees with the late Justice Holmes that the law "must ever strive for, though it can never attain, perfect logical consistency. The process of building up such an ideal system . . . is necessarily dominated by ethical premises. . . ." <sup>7</sup> Certain political theorists, while averse to asserting an ethical basis for democracy, yet admit and even insist upon the moral value of it, as if the moral value were a by-product; yet their very mention of this moral value is obviously meant as a sort of vindication and merit; if so, it is at least one of democracy's tests.

## II

If our argument is so far correct, its truth is entirely independent of whether we shall extend the *word*, "democracy," beyond its political significations. Still, although this is a secondary question, it is important, and we now must ask whether such a social and ethical norm as is implied in the political definition of democracy can be properly called "democracy." Apart from traditional usage, it surely seems natural to recognize the basic implications of political democracy as part of democracy's full meaning. One is tempted to say that if the usage of the term has been predominantly political, it is high time to create a new usage.

But, fortunately, no such innovation is necessary. In the history of the word, usage has accumulated wider and richer meanings beyond the political. Indeed, to revert to a classical instance which is one of the bases of usage, the Athenian democracy itself was not understood by its citizens as political in our restricted modern sense of the term; for the conception of the State then prevalent was much broader than that of the mere machinery of government; it included the welfare of the social body in aspects of living far beyond the political as we view it to-day. "The Greek world . . . had no idea of a non-political society; to it society and the State were synonymous terms, and the social life was a life of citizenship. The distinction between society and the State is a modern one." <sup>8</sup> The political scientist has the right, indeed, to restrict himself to purely political democracy in the narrow sense of the word if he so desires, just as the anatomist may describe a man in terms of merely anatomical language; but as the anatomy of a man is not all that a man means, so the political aspect of democracy is not all that democracy may legitimately signify. Scientists in other fields of the social order, as well as philosophers of the political order, let alone popular parlance, have long ago created a usage which has its rights, if mere usage has any rights at all. De Tocqueville, for instance, was not thinking "of democracy as a form of government,"

but of "social conditions in which the utmost obtainable equality exists." <sup>9</sup> E. D. Adams reminds us that "The ideals of Jeffersonian democracy were primarily political. Those of Jacksonian democracy were both political and social, and in the newer, America, professing allegiance to equality, came closer to the French conception of democracy, . . . stated in terms of 'liberty, equality, and fraternity,' . . ." <sup>10</sup> Professor T. V. Smith thoroughly recognizes the larger meaning of democracy when he writes that "democracy has beyond all ideas of governmental machinery constantly meant a way of life. The tendency of the noun 'democracy' to pass into the adjective 'democratic,' as descriptive of the kind of person easy to live with, well illustrates this ethical potency of a term historically political." <sup>11</sup> Ralph Adams Cram, commenting on the current usage of the word, democracy, observes it as "representing both the implicit aim and the explicit result of the individual and community life during the last two generations in Great Britain, France and the United States. It covers not only practical agencies and methods but all those other forms of activity such as organized religion, education, and social life, where democratic principles have been increasingly adopted." <sup>12</sup> According to Professor Willey, the concept has broadened more and more "to include not only the form of government, or the form of

the state, but the form of society as well. It is even conceived of as an ideal, or spirit. To this extent the formalistic definitions of the past give way to dynamic conceptions. Such writers as Conklin, Giddings, Cooley, Croly, Weyl, Hobson, Small, Dewey, McLaughlin, Ellwood, Mecklin, Hobhouse, Barnes, Addams, J. H. Robinson, Sims, Tenney, Tufts, Willoughby, and A. L. Lowell regard democracy in some wider scope."<sup>13</sup> Croly believes that "the popular definitions err in describing it in terms of its machinery or of some partial political or economic object. Democracy does not mean merely government by the people, or majority rule, or universal suffrage. All of these political forms or devices are a part of its necessary organization; but the chief advantage such methods of organization have is their tendency to promote some salutary and formative purpose.... The salutary and formative democratic purpose consists in using the democratic organization for the joint benefit of individual distinction and social improvement."<sup>14</sup>

Thus for a long time we have had articles, chapters, and even books on the social program of democracy, and mention is frequent not only of social democracy, but of economic democracy, industrial democracy, educational democracy, and other democracies named after the special institutions of society. The Oxford Dictionary, under its

very first definition, sanctions this wider usage as a modern denotation of the term.

In view of these apparent trends in the logic as well as in the traditions of the term, we can reasonably assign to democracy the following regions of meaning:

1. We can concede to the political scientist his definition of democracy for his own purposes; only, for the sake of precision, let us call it Political Democracy.

2. But, surely, it is logical to call any society whose organization and ultimate purpose uniquely demands or is uniquely implied by Political Democracy, Social or Ethical Democracy.

Further, if such a Social Democracy requires of its various institutions a character uniquely arising out of its definitely democratic nature such institutions may well be called democratic, and thus we may have, in a secondary sense, Economic Democracy, Educational Democracy, even Religious Democracy, and, perhaps, others. Indeed, logically, Political Democracy, if it is one of these institutions of a democratic society, is properly a correlative of these various institutional democracies; Social Democracy is a wider thing, of which Political Democracy is only one special expression or instance. The political scientist may still keep within his own definition of Political Democracy

for his special aims, just as any scientist may exclude himself from other fields, well knowing that certain implications will carry him outside his field if he cares to follow them.

Moreover, if it can be shown that Political Democracy is really and fundamentally the offshoot, consciously or unconsciously, of motives or ideals resident in Social or Ethical Democracy, the definition of Political Democracy as traditionally conceived may or may not have to be revised in terms of that which gave rise to it in the first place; in other words, in terms of the purposes which give Political Democracy its reason for being. In fact, if Political Democracy turns out to be an expression of the needs of Ethical Democracy, then in defining the former before the latter we are defining *a priori* and dogmatically and place ourselves in a merely tentative position, while pretending finality and precision. We may even be faced with the paradoxical question: Does fundamental democracy require what we have understood as Political Democracy at all? Surely we are not warranted in merely assuming without proof that Political Democracy as traditionally defined is actually justified by the ends it is supposed to serve. That is a matter for rigorous investigation.



## III

It is this fundamental democracy beneath particular expressions of it, this democracy which is our social and ethical purpose, that we must try to make explicit. In spite of the many treatises on democracy, "no systematic treatment of the philosophy of democracy has been written."<sup>15</sup> A Frenchman, Rodrigues, has remarked of our American idealism that it "is not a theoretic idealism, conceived and formulated; it is practical idealism which springs from action itself."<sup>16</sup> But such an unformulated idealism, however admirable as a sentiment, is a thoughtless idealism, useless for theory and dangerous for practice. It may be true that the clarification of the basic meanings of democracy is a hopeless task; but the motives for attempting it are so increasingly cogent that the task becomes imperative. The urgency of these motives can be best set forth in the form of advantages that would immediately accrue to theory and practice, assuming a definite rationalization of ideal democracy to be once achieved:

It would enable us intelligently to determine whether democracy in any form is really desirable.

It would yield us a clear criterion by which we could weigh, compare, and evaluate criticism, as well as distinguish between those defects of de-

mocracy which actually arise but are no part of its essential nature from those which are inherent in the very notion of it. Being the definition of an ideal to be sought, it would assay any actual democracy as an approximation modified by circumstances, naturally imperfect, knowing that "the true test of democracy is not fulfilment, but progressive betterment." <sup>17</sup>

It would furnish us a means of determining the vexed question of the limits of democracy.

It would, as part of its very definition, make clear the fundamental meanings of liberty and equality and solve the problem of how far the popular will is the expression of organic society on the one hand and of the individual on the other.

It would give us a standard by which to estimate all the subsidiary institutions of democracy as truly democratic, *e.g.*, the political institution.

Since the precision of ways and means is made possible only by the precision of the end to be served by them, the practical measures by which we hope to attain democracy would become relatively rational, and so more specific and certain. We would have conscious objectives of progress and reform.

Add to these advantages the emotional consideration, extremely important in all matters of public régime: individual loyalty would become more intelligent, therefore more intimate and thus less

vague and vacillating, and social coöperation less pregnable to the hazards of counter events and movements. If "the average voter does not care a rap for his vote,"<sup>18</sup> it is because he thinks of it merely as a vote, merely as part of the routine of political democracy, instead of as a priceless instrument for individual and social self-realization. Only the understanding of democracy as an objective as large as living will furnish that enlightenment which makes a vote rational, and that motive which is strong enough to overcome apathy.

#### IV

Such a fundamental appraisal of democracy is now due. It is not only urged upon us by these theoretical and practical considerations; it is entirely in keeping with and is a natural outgrowth of a tendency of our time—a tendency only just emerging into our consciousness. For, practical as we pretend to be, we have, precisely on account of our practical needs, been driven lately to the consideration of those ultimate questions which we have heretofore neglected, even sneered at, as merely "theoretical vagaries."

This new compulsion of ultimate questions has made itself felt in all realms of human understanding and endeavor. Recent developments in natural science have led physicists and mathematicians to

such a discussion of the basic concepts of Space and Time and Motion as disturbs time-honored assumptions and invades regions of thought traditionally relegated to the shunned precincts of "speculative" metaphysics. Historians, erstwhile suspicious of philosophies of history, are being pressed to the problem of the selection and interpretation of historic "facts," and are occupied with discussions on those underlying principles that unlock the meaning of method. Education, too, now calls for its rational justifications, and philosophies of education joust valiantly one with another. The situation of religion in its relation to science and the other disciplines of reason have coerced it into a far more critical investigation of the foundations of belief than ever before; a new "apology" is in the making. Even that most practical of human interests, the economic, is urged beyond its hitherto restricted field to a survey of the bases of civilization and the criteria of values without which economic theory is neither comprehensive nor sound.<sup>19</sup> Lawyers as a class are not especially inclined toward speculative interests; yet, even the legal profession is beginning to realize that the law cannot get along without philosophy, and a study of the larger principles underlying the law is now being advocated as an advisable part of the training of the modern lawyer. Most obvious of all, the political scientist, stimulated by the issues of the World

War, and the political reconstruction of the world, is obliged to evaluate anew all the concepts involved in an adequate philosophy of the State.

In all these realms, then, not merely because of theoretical curiosity, but coerced by practical necessity, we are facing a rebirth of thought about the ultimate problems of mankind. Mere science will not justify itself, the boundaries of reason are larger than we thought, and the scientist is becoming, perforce, a philosopher as well.

Now, it is idle to suppose that democracy, the most comprehensive of all modern movements—including them, indeed—can alone be allowed to escape a new appraisal of its deeper meanings and implications. It faces the same practical imperatives as all things human to define the hidden significance of its pretensions. It is not at all a matter of choice. If democracy is in truth a legitimate goal of the social order, as it so often claims to be, it must become thoroughly aware of its ultimate significance, so far as it can be found.

## CHAPTER IV

### DEMOCRACY AND THE RIGHTS OF MAN

#### I

IT has been sufficiently shown that the commonly accepted definition of political democracy as government by the people is so vague and inadequate that we are logically compelled to go beyond it and search out the hidden assumptions back of it, if it is to be made at all clear and coherent.

It has also been argued that these assumptions take the form of ultimate human purposes or ideals, belonging to the realm of what ought to be, as contrasted with what actually is; in other words, to the realm of the moral order. But apart from the considerations so far brought forward, which are mostly theoretical, there is abundant proof that not merely theoretically, but actually and concretely, political democracy finds its justification in ethical presuppositions. I refer to the fact that, historically, political democracy in the sense of popular government has always arisen to express and guarantee what are called the Rights of Man. Now, I shall hope to prove that it is impossible to formulate a defensible doctrine of political rights

without reference to moral rights; that the concrete history of the struggles of peoples for their rights is, truly seen, a history of moral rights battling for political recognition.

But first, I think that few, if any, will deny the truth of the statement that whenever democracy has been challenged, an appeal to human rights has furnished its ultimate defense. It is assumed that there are certain human rights which are fundamental: rights which, once recognized as valid, demand democracy as the only condition, or, at least, the best condition of their fulfilment. The history of political democracy—the aspect of democracy that has been most conspicuously fought for—is a story of the struggle for what are repeatedly proclaimed as men's inalienable rights.

The American democracy is a definite example of this. Many of the colonists came to America in the first place discontented with their rights in the old world and confidently expecting to enlarge them in the new. When they finally broke with England, it was because they believed these rights to be ignored or overtly violated. In setting up an independent new-world state, they accompanied it with the declaration that all government, and thus, their own, existed to secure the rights of the governed; and in this pronouncement Jefferson was sure that he was only expressing the prevalent convictions of the American mind. Nearly all the states

embodied in their constitutions bills of rights; and, while, at first, such a bill failed to be included in the Constitution of the United States, this whole document, with its amendments, has been regarded as the supreme instrument guaranteeing the rights of the American people.

## II

In so far as democracy thus appeals to our human rights for its justification, it may, indeed, be on the sure way to its deeper meanings. But there are difficulties. For, to say that a man has rights is one thing, and to prove it is quite another. Still harder is it to prove exactly what these boasted rights are. Suppose a group of men to set up a right they are willing to die for and which you do not believe in: how will you proceed to demonstrate to them and to the world that they are mistaken? Most frequently, the issue has been left to force: rights have been announced with passion, vindicated with passion, or overthrown by passion. Reason has had little or nothing to say.

The fact is that not only democracy but almost every conceivable form of government, almost every imaginable reform or revolution or war, has sought triumphant justification in some doctrine of rights. Not only have contradictory sides of the same issue appealed to contradictory rights, but to



conflicting interpretations of the rights on which they agree. The sacred rights of equality have been fought by the equally sacrosanct rights of natural aristocracy; the rights of the slave by the obvious rights of superior races; the vested rights of capitalists by the inviolable rights of proletariats; the immemorial rights of free competition by the rights of man to economic security in the socialistic State; the divine rights of kings by the equally divine rights of peoples. No matter how contrary the issues, each protagonist confidently bases his holy cause upon the inexpugnable rights of man. The right of coercive government is answered by the impassioned appeal of the anarchist to the right to live his own life; the right to regulate thirsts by the rights of personal liberty. Nothing escapes. The "rights of man" degenerates into a catchword, a slogan to justify anything at all which a people or a faction happens to hold and is willing to fight for. That the slogan is almost always sincere and enlists noble and impassioned loyalties is not the point. The point is that the history of human rights reveals arrant vaguenesses and contradictions that must be solved. To suppose that democracy is the necessary arena for the achievement of human rights and is actually deducible from them is no better than any other propaganda of the passions until we can find out just what we mean by such rights and how they can be proved, if at all. Ed-

mund Burke pronounced the whole question a jungle—"The Serbonian bog, where armies whole have sunk."

There is no doubt that he is right. But this does not need to mean that the question is hopeless. Jungles have been penetrated and bogs overcome by many a determined army. A merely metaphorical jungle need not frighten us; it need only make us careful.

## CHAPTER V

### SUNDRY THEORIES ABOUT OUR RIGHTS

**I** PURPOSE, then, in spite of the difficulties in the way, to approach the basic meanings of democracy through the consideration of the Rights of Man.

Such a procedure has the advantage of being realistic, taking its point of departure from notions which are not only immensely significant in the actual history of democracy, but are also current and familiar to us now; also, and above all, it is precisely through his insistence upon his rights that the common man has most forcefully revealed his moral motives, rather than through any more direct expression of what might be called an ethical theory. For, certainly, most men are not at all aware of the ethical assumptions they make even when they fight for great issues, in spite of the fact that these very assumptions are their real motives, which they follow often to suffering and death. These ethical assumptions are so very close to the daily lives of men that, like breathing, they are taken for granted, demanding no analysis, no justification. In other words, ask the average man

his theory of the moral order, his view of ultimate human purposes, and he cannot answer you: but assail what he calls his rights, and he will promptly show you that he has a fairly definite outlook upon life.

But how shall one proceed?

I intend to enter immediately and boldly into the vexed problem of human rights as such, to try to determine how they may be legitimately based, what they are, and finally to discover in what sense, if at all, political democracy is really necessary to guarantee them.

# I

To some, the question of human rights appears far from complex. On the contrary, it is urged that it is very simple and that the answer is clear: *We have exactly such rights as the State gives us.* And, since the State commonly expresses its will through law, this position is usually taken to mean that man has no rights whatever except those which the law actually grants him. If the law gives him the right to property, he has it, and in such mode as the law decrees; if the law does not, he has it not—and that is all there is to it. Positive law is the real source of all our rights. All else is vain speculation.

“Vain speculation.” It is quite probable that an aversion to this has been largely responsible for the vogue of this view. It is the “hard-boiled” attitude,

well in keeping with an age of positivistic science, and sharing its suspicion of all metaphysical and ethical theories as vagaries starting with unbased assumptions and ending in impractical generalities. It may be, too, as Professor Cohen suggests, that "this positivism is largely due to the expansion of modern industry and commerce which has caused lawyers to be more concerned with the protection of private economic interests than with the larger issues of social well-being." <sup>1</sup>

But whatever the reasons for the legalistic view of human rights, it will not hold unless one makes at least two very strange assumptions: first, that the body of our law is now a finished system, nevermore to change; second, that this same body of law is infallible. Both assumptions are challenged by the plain fact that law does change: new laws are made and new rights are born; old laws are modified and revoked, and old rights are simultaneously altered and rescinded. In spite of its extreme and perhaps pardonable conservatism, law can never be thought of as a frozen and static thing, any more than any other human institution.

What of it?

This: If laws change, and with them the interpretation of what human rights are, it is because above the law as we actually have it there is always the ideal of law as it ought to be and is not. In every civilization there are human rights as the law

sees them, contrasted with human rights as they really are, whether the law recognizes them or not. It can readily be shown that the merely legalistic interpretation of rights violates the whole course of history, the common consciousness of mankind, and entangles us in strange contradictions. How many times have there been rights amply conceded by law which mankind has fought against and finally repealed precisely because these legal rights not only did not coincide with, but actually trampled upon the rights of man! How often have men struggled to create new laws because they were believed to express human rights not yet embodied in the law at all—as, for instance, the right to religious freedom! The fact is that in the common consciousness of mankind; as well as in the minds of eminent legal philosophers, law never creates fundamental human rights, but rather, is itself founded upon them, exists to guarantee them, and ceases when it fails to serve them. It is conceivable even that there are rights which are not and never can be embodied in law and that forever will remain outside it, such as the right to freedom of thought. Freedom of speech a law can guarantee; but freedom to think, which surely is both a right and a privilege, no law can secure or destroy, although it may secure or destroy the conditions favorable to it.

You may have rights, then, which no law yet

embodies, and may never accord you, but they may be your genuine rights none the less. And when you say that they are your genuine and real and true rights, you do not mean merely that you *wish* you had them, or that you desire them, or even that you demand them; you may, indeed, mean all these things, but you also mean vastly more. When men speak of their rights, they are speaking of something that they are convinced they ought to have and ought to insist upon having—things which, if denied them, means doing them a fundamental wrong. Thus, the whole conception of human rights is, at bottom, a *moral* conception; primarily it has to do not with what the law is, but with what the law ought to be.

It is in this sense that rights are so often said to be "inalienable"; it is not that they *cannot* be taken from us, but that they *ought* not to be taken from us. Life, liberty, and the pursuit of happiness may be denied us, but they ought not to be denied us; certainly, they *can* be alienated from any man; but every man, even in the process of losing them, will cry out that they are inalienable rights, none the less, meaning that to alienate them is to violate the whole moral order.

Indeed, the legalistic theory of rights, if taken literally, breaks down as soon as we uncover what is hidden beneath it. For instance, there is no advocate of this view who would not insist that laws,

and thus rights involved in them, should at least be consistent with one another. Note the *should*. But this implies an ethical ideal quite outside the law itself—the ideal that law ought to be a rational system, whether it is or not. Mere law states nothing of the kind: here is something beyond and beneath the law by which it is to be judged as valid. It is quite possible that only through law with its attendant penalties may some rights be made *effective*; in other words, a right may not be able to be practically vindicated until the law sanctions it: but this is very far from saying that actual law as we have it is the source of rights. In all ages there remains the vital distinction between law as it is and law as it ought to be. Socrates made the distinction; Plato rendered it still more explicit; Aristotle, in spite of his differences from Plato in other matters, insisted upon it; the Stoics continued the tradition; Roman jurists adopted it in various guises; the medieval schoolmen upheld it; the rationalists of the eighteenth century fought for it; English jurists, such as Coke and Blackstone, defended it; the French physiocrats contended for it; and the American revolutionists based their Declaration upon it, with such a theory of law and government as is implied in the unequivocal pronouncement of John Quincy Adams that there are “immutable laws of justice and morality” to be considered “paramount to all human legislation.”<sup>2</sup>



Now, the mere fact that the distinction between actual and ideal law and rights has been made is no conclusive argument for it; although, when a doctrine has persisted in all sorts of forms through the vastly varying vicissitudes of many centuries, one ought not to dismiss it lightly: it is entitled to cautious and exhaustive consideration. But back of the distinction between rights founded on law as it is and those inherent in law as it ought to be is the logical necessity for it. This logical necessity has already sufficiently been indicated.

What has been said about law as the ultimate source of rights can be applied to the theory that some sort of social or political contract, of and by itself, creates rights, whether the Contract is regarded as an historical fact or a convenient fictional hypothesis. In so far as any Contract Theory of rights appeals to some basis of the Contract beyond the mere Contract itself and vindicating its validity, the theory shifts and resolves into some theory other than the mere fact of Contract as the genuine source of rights, however much a contract, real or hypothetical, may be thought of as giving security to rights already determined upon other grounds.

## II

But, however necessary the distinction may be, the real question still remains to be answered: If

positive law is not the ultimate source of our rights, *what is?*

Historically, there has been much evasion here, most often hidden under the glamorous appeal to what has been called Nature. "Natural Rights" has been a slogan quite effective in enlisting popular assents and even loyalties to the death in times of rebellion and revolution. But the label is often a question-begging device, and covers a multitude of different theories. For the moment, then, for the sake of avoiding vagueness, we may as well abandon this particular phrase, "Natural Rights." Rather, let us see what are some of the chief ways in which men have founded their rights independent of the positive law, allowing any or all of them to be as "natural" as their sponsors have been pleased to regard them. For we are not engaged in a technical *history* of human rights; we are engaged in an attempt at a logical analysis of the chief points of view as such; that is, abstracted from their historical settings, with the sole intent of arriving at a tenable position.

The theories of rights that I shall take up in this chapter are the following: those that base rights on: (1) self-evidence; (2) the will of God; (3) custom; (4) the might of the stronger; (5) an original state of nature. Suppose that we review them briefly.

*Rights are self-evident.* "We hold these truths to be self-evident. . . ." Well, as long as we do, we

will ask no questions. But a little reflection forces us to raise questions that are not a little embarrassing, especially the reflection that, in the history of human rights, propositions quite contradictory to one another have been held to be equally "self-evident." Those who have believed that the equality of the worth of all men is guaranteed by self-evidence have been earnestly opposed by those who believed in the self-evidence of a natural inequality—a self-evident aristocracy of worth. You may deny as much as you please that one or the other of these positions is actually self-evident; but if your denial is all that you have to offer, you will be met by some one who is sure that his own denial of your position is equally valid and self-evident.

Let us consider just what one means when he says that his rights are self-evident.

One may mean that everybody, or, at least, everybody whose opinion one cares about, assents. Now, popular assent may attach itself to things that are indeed true; but does this mere assent *prove* the truth of them? Surely not. Why, even if one found one's declaration of rights to receive universal assent (in which case, one would never have to fight anybody for them), mankind might well be mistaken, as it has often admitted itself mistaken. Self-evidence in the sense of universal assent, however formidable as an efficient weapon in practical affairs, is not proof; it is the evasion of proof.

But self-evidence may not be so poverty-stricken a device as to signify merely assent. It may not utterly ignore proof. It may simply mean that, although proof is available, it is so accessible or apparent to anybody with common sense that it is superfluous to point it out. Every age is characterized by widely prevalent fundamental assumptions, its great premises, such as theories concerning the ultimate nature of man, or of God; and the rights of man for that age are rationally implied in these. The proof is there if anybody wants to take the trouble to find it; but the proof is so easy and so generally accepted that it is said to be "self-evident."

Yes, perhaps; granted that one accepts an age's fundamental premises without challenge. But what about them? Are the underlying beliefs of the age of Jefferson about man, God, and society the same as the pervasive beliefs of the twentieth century, even in Jefferson's own United States? If not, self-evident rights in one age may well be quite different from self-evident rights in another. The fact is, self-evident rights dissolve as soon as we are critical with regard to the boasted premises from which they are supposed so easily to emerge, especially when we find that these same premises are usually suppressed and hidden, and, at the best, vague. For instance, from what premises does one so easily prove that all men "are endowed by

their Creator with certain inalienable Rights," and that these rights are as specified? Jefferson mentions as premises, "the laws of Nature and of Nature's God." Think of the system of metaphysics, of theology, of ethics, of science current in Jefferson's time, that are involved in such a phrase! Is there any remaining self-evidence for these in an age of Darwin and of Einstein?

But, by self-evidence of rights we may mean that although they are not proved by the usual logical methods, they are, nevertheless, made rationally certain in another way. They are such propositions as, when clearly and distinctly seen, command immediate and necessary conviction. They are what are called intuitive certainties. And they are rational: reason when confronted with them at once approves.

I fear that the refinements of modern psychology have made this view of rational intuitionism obsolete. More goes on in this "immediate" intuition than one is naïvely aware of. Assumed premises are in the background, after all. Anyway, what is so intuitively certain to one civilization is not at all intuitively certain to another. Again, we need a criterion for our rights beyond self-evidence, if they are to be responsibly guaranteed.

So far, is it not clear that to base rights upon their self-evidence is to base them upon a question-begging epithet as vaguely futile as it is to base

them upon their "naturalness"? Self-evidence will not bear logical scrutiny. We must go considerably deeper.

Still, there is a further meaning of self-evidence which, in the interests of completeness, we ought to consider. I refer to a neat device which logicians sometimes call dialectical proof. It consists in establishing the necessary truth of a proposition without going outside of it all: by showing that anybody who tries to deny it is forced to assume, in his very denial, the proposition he assails. Thus, to take an easy case: suppose that the proposition to be denied is the first Law of Thought, the law of identity: "A is A," the "A" standing for anything you want to think about. To deny this *is to assume that your denial is your denial*; in other words, that A is A, the very proposition you are attempting to deny. So you can't deny it—that is, without contradiction. Therefore, it is a necessary truth and *self-evident* in that it is proved without going one whit beyond the proposition itself.

But irrefutable as this sort of self-evidence is (granted that we have made a bargain to abide by consistency), the historic proponents of human rights have rarely if ever used it. The right to property—what is there self-contradictory in the denial of it? Or, the right to liberty? To deny either may well contradict something else, such as one's desire for happiness, but not itself.

Yet, let it be freely confessed, there is immense importance in this method of self-evidence even for human rights, when properly applied. We shall utilize it later in our own constructive result.

### III

Another view we mentioned is that *our rights are divinely ordained*, based upon the will of God. This view has had tremendous importance historically, and was seriously and successfully appealed to in the formative period of our own America.<sup>8</sup> The rights mentioned in the Declaration are those with which men are "endowed by their Creator," and our independent equality as a people is here vindicated by confident reference to the Laws of Nature's God. This view is as old as religion—and as various.

The crucial question here becomes this: How is one to discover just what rights God is supposed to have given us?

Well, obviously, it all depends upon what kind of God one believes in and what particular religion one happens to espouse. How adjust the violently conflicting claims of the rights endowed various peoples by their various gods? But, taking it for granted that the Christian religion is the true religion, two main ways have been suggested for finding out the Christian God's intentions about

our rights. The first is to derive them from the Bible. For instance, the great philosopher, Melancthon, partially grounded rights upon the commands of God as contained in the Decalogue. And I suppose that when Christian authors mention the rights we are presumed to have been endowed with at Creation, they are referring to the account in Genesis; as when Blackstone speaks of free will as a gift of God at that event, and directly deduces from it the rights of political liberty. Even as late as the middle of the last century, the rights of the slave were based upon the Scriptures by many Abolitionists.

Such a basing of human rights is clearly a matter of faith and is acceptable only to those who embrace not only the infallibility of the Hebrew writings, but of some particular group of its interpreters. But ours is not an inquiry into the faiths of the faithful, however admirable they may be; it is an inquiry into the rational basis of rights, and the road we have chosen is not the highway of faith, but of logical proof, until we can find a "no thoroughfare." Somewhere these roads may meet and merge, but not yet.

The other way, or, sometimes, a supplementary way suggested for discovering God's will about our rights is through the Laws of Nature, "dictated by God Himself," and through which He speaks to man. "The Voice of Nature is the Voice of God."



It is in Nature that man's God-given rights are to be found revealed.

But granted that this is so, how do we find out the laws of nature, this logic of the universe which is also God's logic? Certainly by reason, rather than by faith, so far as this view differs from the view that appeals to the Bible. But in that case, the foundation of our rights is no longer in the fiat of God but in the discoveries of human reason. The fact that nature's laws are also the will of God is significant, but not vital to the logic of the search into what rights we human beings actually have. Unless, indeed, we say that the only thing that can justify making the laws of nature, once found, a rightful guide in human affairs is that God, who is always right, made them. But how do we prove that God made them and was right in making them? By showing their reasonableness. So, our faith in reason is enough for our purpose. This faith at least we must have for any logical enterprise, including this.

#### IV

Another way men have employed in defending their rights is the appeal to *long established usage or custom*. After a long time, the habits of a people, their claims and privileges, become integral parts of their very life, their veritable second na-

ture; and to violate them easily appears as an unwarranted encroachment upon rights regarded as natural and sacrosanct.

But thus to found our rights upon the unwritten law of custom is to face the selfsame difficulties we discovered in attempting to found them in the positive law. We are compelled to go beyond custom to find a criterion to resolve conflicts between antagonistic customs, to validate the revision of old customs (which constantly change, whether we will it or not) and, above all, to show how it is that what *has* been is what really *ought* to be, not only in the past, but now and forever. To provide a way to justify the revision of established customs is to transcend mere custom; therefore to transcend the position that custom, of itself, is any adequate basis of our rights.

Another theory, which has had currency from the earliest times to Nietzsche is, *rights are based upon might*—the might of the stronger. Who, having read Plato's *Republic*, does not remember Thrasymachus?

But how does mere might *prove* anything? Not unless we make one of two assumptions: either that God is on the side of the mighty, which makes them righteous by that very fact; or that the universe is so organized that Reason necessarily prevails through its own invincible power. In the former case, we are thrown back again upon faith,

which is not our province. In the latter case, upon reason, which is our province, but which refers us away from the specific theory that might just as might is the criterion of rights to the theory of might as *reasonable*. In other words, Reason, with the corollary that it is mighty. We shall take up this criterion of Reason as the source of rights in the proper place.

Another view, one that is difficult for us to take seriously nowadays, pretends to discover our rights by reference to an *original state of nature*. It is conceived that our "conventional" civilization, especially its political institution, while arising to express and guarantee the rights we originally had, tends to corrupt them. Therefore, we must constantly keep in mind that primordial state of man as the final source of his fundamental rights. This original state of nature is sometimes, though rarely, conceived as one that once actually existed; more often it is thought of as wholly imaginary, but a valuable fictional hypothesis, representing a philosophy of the state.

But, however, conceived, the view as it stands becomes futile when it attempts to answer three pertinent questions:

First: What rights did man have in this alleged original state of nature? The answers are hopelessly conflicting, especially since, if we are not to take this original state as an historical fact, but as a

convenient fiction, we can manufacture any fiction we please to suit our theory.

Second: Even if we could determine man's rights in an original state of nature, what of it? How prove that they are the exact rights he *ought* to have? The original state of nature may have been wholly wrong.

Third: Why is an *original* state of nature any more authoritative than any *later* state of nature into which man has developed? Is there any sanctity in *earlier*, versus *later*? Aren't the later stages of development just as "natural" as the earlier? If not, why not? The advent of the theory of evolution makes it difficult to conceive that man should be governed by what he was at any particular period rather than by what he is now.

Still, there is a hidden worth in this view which will be brought to light in the proper place. This worth is found in the theory that our rights are based upon our fundamental and inexpugnable instincts and desires.

To this we now turn.

## CHAPTER VI

### THE RIGHTS OF MAN AND HUMAN NATURE

#### I

**T**HUS far we have been discussing human rights in the abstract, referring to concrete rights only by way of illustration. It might be instructive, before proceeding further, briefly to enumerate more of the specific "rights" which men have actually claimed from time to time throughout history. The list is very interesting and will serve to make our problem more concretely definite. It may even suggest the direction in which to look for a solution.

I shall present the list without any attempt to reduce them to order, but just as I happen to have come upon them in a few score of books wholly or in part devoted to the subject.

It has been alleged that we have the right to Life; to Freedom of various kinds, such as Freedom of Speech, Freedom of Worship, Bodily Freedom, Freedom of the Press, Freedom of Thought, even Freedom of Affection; the rights of Property; the right to make Contracts; to Equality before the Law; to Use the Courts; to Public Meeting

and Assembly; to Pursue Happiness; to the Security of the Person; to Education; to Toleration. Then there are the rights of Labor, even the right to Labor, yes, even the right to Leisure; the rights of Family, even the right to Family Care; the right to Good Birth; the rights of Honor; the rights of Political Self-government; of Industrial Self-government; to Vote; to Hold Office; the right to Trial by Jury; to Emigrate from One State to Another; the right of Immunity from Fraud; the right of Resistance to Oppression. And still the list is far from complete. Winkler, in his *Principiorum Iuris Libri V* lists "twenty-one articles in which the law of nature is comprehended and on which the natural rights of men (*iura naturalia*) are based." <sup>1</sup>

There is no purpose at present in expanding the list. Every "right" mentioned has been named by conspicuous authorities, although, of course, the list each considers tenable differs from the list of each of the rest.

Let us scan this heterogeneous catalogue of alleged "rights" and see what problems it suggests. The following questions immediately arise:

*First:* How are these rights to be defined? What, exactly, is meant by each of them? The same so-called right obtrudes itself many times in actual history, as well as in theoretical discussion, but with quite divergent connotations. For instance, what is meant by the right to life? Simply the

negative right not to be killed, or, at any rate, to have one's life protected so far as the penalties of the law are able to deter killers? And what are the limits to the right? Soldiers kill; the State kills. Does the right to life reach out to include the right to food and shelter? To sanitary conditions? To medical treatment? Or, consider the rights of property. What is property? Does it include property in ideas, such as the law of copyright protects? Shall it be extended to mean that every man has the right *to* property? Or, take freedom of speech. Everybody admits this right has its limits. What, precisely, are they?

*Second:* How classify such a heterogeneous array of rights? Surely not all of them are on the same level of importance! We have already referred to the conflict of alleged rights and how contradictory causes have been based on contradictory rights. When one right conflicts with another, which is to give way, as being less essential? One suspects that some of these rights are logically derived from others more fundamental: which are they? Are some rights merely temporary, dependent upon circumstance or upon the stage of civilization, and others rights for all time? Is every man entitled to all of them, whether or no, or are there special rights which special individuals may legitimately acquire? Many attempts at a classification of rights have been made, as: Rights may be divided into

Physical and Mental; Moral and Legal; Private and Public; Natural, Civil, and Political; Alienable and Inalienable; Actual and Real; Liberty rights and Security rights; Primary and Secondary; General and Particular. What classification shall we adopt?

*Third:* There is the question of completeness. Of course the list given does not pretend to be exhaustive of all the rights that men have claimed. Very well, then, but what rights shall we add, and on what principle? Are there any "rights" named which are not really rights at all? As a matter of fact, is there any such thing as a complete enumeration of human rights?

*Fourth:* It appears, at least, that some of these rights have bases quite different from some of the others. Indeed, every one of the criteria discussed in the previous chapter has been used to justify one or more of them historically. A few rights have been vindicated by all of the various bases so far mentioned.

All of which leads us directly back to the question: How do we logically and unequivocally prove that men have rights at all? What is the true source of our rights, granted we have any? Only with the answer to this question do we reach a solution of the vexatious problems of just what our rights are, how they are to be defined, and what is the essential relation of each to all the rest.



## II

Haphazard as is the array of rights that have emerged historically, conflicting as they are and variable as are their bases, there is one common characteristic of them to which their proponents are ever driven when called upon for their ultimate defense, a characteristic to which we have already referred: a right is something one *ought* to have, whether one has it or not. Finally to justify a right is not merely to show that, as a matter of fact it has been insisted upon, or even been actually granted by law, but to show that to deny it is a *wrong*, that is, a violation of the moral order. We have shown that the legalistic or positivistic view, when analyzed, becomes hopelessly inconsistent with its own pretensions and lands us, sooner or later, in an appeal to law as it ought to be as a criterion of law as we have it. As for the other bases named—Self-evidence, God's will, Custom, Might, an Original State of Nature—they are simply so many ways of justifying what ought to be by appeals to principles which turn out to be rationally inadequate to justify any ought whatsoever.

It inevitably follows that since rights refer to a world as it ought to be, our problem becomes this: How establish that *anything* ought to be? If a right is a moral demand, how prove that *any* moral demand is valid? When this is answered, and then

only, are we logically ready to evaluate the particular moral demands that have gone by the name of rights.

To go into the matter adequately would be, of course, to write a treatise on the theory of values. But I hope that certain fundamental considerations sufficient for our present purpose can be made clear.

First a general statement; then some comments in explication of it.

Rights, truly understood, and so far as they can be vindicated, are conditions necessary for the best realization of what human beings are ultimately capable of becoming. This end, the ultimate unfoldment of our capacities and powers, is expressed through fundamental desire.<sup>2</sup> This fundamental and permanent desire, or will, inexpugnable, ever present, and thus authoritative over our merely passing wants or demands, gives rise to what we call our sense of obligation, or oughtness, inducing the feeling of moral blame when we ignore it, or moral approval when we follow it. This end is the ultimate obligation, and so the ultimate right of all. All other rights are either constituents of this right, or the necessary means of best achieving it. Whether any right shall or shall not be protected by law and thus become a legal right depends upon whether this is the best way to ensure its effective recognition.

I am assuming in this statement that we human beings have universal, necessary, and permanent desires; that it is in their very nature and a part of their definition to be desires through which our fundamental capacities and powers struggle for realization; that the ultimate object of all desire is the *self* in some form; that, as F. H. Bradley argues, "nothing is desired except that which is identified with ourselves, and we can aim at nothing except so far as we aim at ourselves in it."<sup>3</sup> I do not mean at all to say that all men are reflectively *conscious* of such a fundamental will; on the contrary, it is present in quite varying degrees of awareness in various people: but it functions, nonetheless, however obscurely, especially when something it implies is attacked. This fundamental will, and, thus, its objective, tends to become more and more consciously explicit with the growth of civilization, taking civilization in the long run. For the average man, it functions chiefly in his sense of obligation, which arises whenever there is a conflict between his permanent will and his merely temporary desires. His permanent will is not authoritative in the sense that it *compels* him to act according to it, although it would compel him if he were fully aware of all its meanings; it is authoritative in the sense that it becomes the criterion of how he *should* act. The end of self-realization which it dictates is the supreme obliga-

tion, and so, the supreme right. It is nothing less than the right to do right. All other rights are deduced from it, are relative to it, and, as means to an end, may be only relatively permanent, depending upon time and place and the particular stage of social progress that happens to obtain.

Now, so far, all this may appear fairly abstract and empty. It is certainly abstract; but it is not at all empty, once its abundant meanings for our problem are made more explicit. But before essaying this, let me remark that in its broader outlines, this view of the foundation of human rights has had an influential history and is now being increasingly urged, or implied in various guises, by political scientists, legal philosophers, and ethicists. Historically, it has been the view of most ethical theorists whose criterion of right and wrong for men and institutions has been an end or goal.

The authors that I shall cite here are recent and mostly contemporary, since it is my purpose to show a present trend. In spite of their other differences, these writers at least agree that a moral end is the true criterion of rights and that this end is self-realization in some form. As might be expected, they differ in terminology, some preferring to substitute for "self-realization," such terms as "perfection of human personality," "self-development," "satisfaction," "to be oneself at one's best," "ideal of perfection," "to become what one is capable

of becoming." They differ with regard to whether this end is determined by the will; or if by the will, how the will is to be conceived. They also differ with regard to how self-realization is to be defined, and in precisely what sense it is social. But even in our own exposition, this is still an open problem, purposely deferred.

Bosanquet (after Henrici) defines a right as "that which is really necessary to the maintenance of material conditions essential to the existence and perfection of human personality."<sup>4</sup>

Paulsen, seeking an ultimate basis of rights, holds that "The most desirable thing would be for each individual to exercise, with absolute freedom and an unlimited control of all the means, all the functions of life which lead to and are included in the perfection of his natural capacities." Of course, he hastens to add that "such unlimited rights are impossible where many live together," but they become rights in so far as they are possible.<sup>5</sup>

Fouillée, after discussing what he terms "the self-realization of desire," proceeds to "the basis of right in a universal end," arguing that "There was something altogether too crude and materialistic in believing, in accord with traditional philosophy, that right is based solely upon some already present and tangible *reality*, which may be established as an empirical *fact*." He asks, "Why may not an

ideal and *intelligible end* that one has in view serve also as an *intelligible basis of right?*" Such an end he regards as "a potential focus whither all wills tend, and where all wills converge." <sup>6</sup>

Miraglia maintains that "inherent rights represent a series of postulates, guaranteeing to the individual conditions suited to his development. . . . The idea of these rights is inseparable from the end, which both the individual and the community should strive to attain. This end is the full realization of the human essence." <sup>7</sup>

Professor Henry W. Wright unequivocally argues that, "As complete Self-realization is man's highest good, the opportunity thus freely to realize his personal capacities is man's moral right. . . . The same right with which a human individual may demand the opportunity for self-development extends to the conditions necessary for such development." Professor Wright then proceeds to deduce the particular rights for which men may claim protection from the State.<sup>8</sup>

Professor Rogers, too, espouses the general view I am defending, basing rights upon desire, and holding that the fundamental right is the *right to satisfaction*. "The general claim to a right to live the life that calls into exercise one's powers, subject to the rights of others to the same thing, is ultimate." <sup>9</sup>

Professor Laski, although denying that rights

mean the power to satisfy desire, nevertheless falls in with the general view whose trend we are illustrating. "Rights, in fact, are those conditions of social life without which no man can seek, in general, to be himself at his best." <sup>10</sup>

Professor Urban is certain that "to say that the ethical end is self-realization is to say in the same breath that *ethically* we have a right to the *means* of self-realization. . . . A moral right is a claim implicit in and deducible from the moral end of man as a member of society. Or more briefly still, we have a right to the indispensable conditions of the moral life, to the values that are implied in total self-realization—always remembering that the moral life is a life of a person, and of a person whose nature is such that his own good or value cannot be divorced from the goods or values of society." <sup>11</sup>

Professor Willoughby is a political scientist who is keenly aware that a sound philosophy of rights rests in this same region of ultimate ethical ends, and that these ends are dictated by rational desire. "The central concept of modern ethics is the moral personality of man. This implies that each individual is able, and, in fact, is irresistibly impelled, to formulate for himself an ideal of perfection toward the attainment of which he is conscious of a moral obligation to strive." There follows from this "an inherent right to be allowed by others to realize in fact, so far as is compatible with their

reciprocal rights, those conditions of life which are implied in the ideal of personal development which each frames for himself." <sup>12</sup>

Professor Hocking, whose contributions to the contemporary philosophy of the State are highly significant, is another instance of a thinker who adopts self-realization as a basis of rights. "It is right, or absolutely right, that an individual should develop the powers that are in him. He may be said to have a 'natural right' to become what he is capable of becoming." <sup>13</sup> From this supreme right, Hocking then derives those essential rights which men can legitimately demand from the State.<sup>14</sup>

### III

Relating ourselves to the other bases of rights reviewed in the previous chapter, rights, in the general view I have been presenting, may be regarded as "self-evident" in the sense that one does not have to *prove* fundamental desires; one *finds* them as facts, they cannot be gainsaid, they are ultimate. As Professor Rogers puts it, "the search for any further answer to the question, What right have I to be satisfied? is illegitimate, since the very root and content of the recognition of rights lies in this self-evident character that human desire bears within its own nature." <sup>15</sup>

Rights may be regarded as being just as "God-



given" as any other fundamental things in the universe, for if the voice of Nature is the voice of God, surely the voice of ultimate Human Nature is also His.

Rights are in accordance with custom in the long run, since customs themselves are based upon those universal desires which establish custom, in so far as custom has any perdurance.

Rights are not based upon Might, it is true; yet they are coincident with the only Might that can finally win man's assent, the might of his own permanent will.

Rights are in accordance with an "original state of nature" in the sense that they are derived from basic human nature and are thus "original" in the only sense that will make sense.

And if one still clings to the time-honored slogan of "natural rights," surely rights grounded in basic *human* nature are "natural" enough! They "are 'innate' or 'natural' in the same sense in which according to Aristotle the State is natural; . . . they arise out of, and are necessary for the fulfilment of, a moral capacity without which a man would not be a man." <sup>16</sup> There has been a growing tendency, represented by most of the writers I have been quoting, to speak of "natural rights" with this meaning.<sup>17</sup>

Finally, rights are "rational" in senses hereafter to be developed, namely: fundamental desires are

the primary data with which human reason works, the content to which it gives form; indeed, reason itself is justified only because we desire it and cannot help desiring it; and the mutual adjustment and organization of desires is the main business of reflective reason, in so far as it functions in the world of purposeful action with its persistent concrete conflicts.

But, as we have already admitted, the criterion of "self-realization" is useless unless we are able to define it further. So far, it is a highly abstract formula, significant so far as it goes, but with no precise content. We must examine this concept more carefully and see if, from its analysis, we are any nearer to a solution of the problems we have set before us, namely: Just what are our rights? How are they to be defined? What is the relation of each to the rest?

#### IV

First, it is not only self-realization which we seek, but *total* self-realization. To put it otherwise, the most fundamental desire of all is the desire that *all* our desires shall be fulfilled. The good fairy of the tale need not trouble to proffer us the classical three wishes; one is enough: the wish that *all* one wishes be granted.

Only, there is one difficulty with this: desires,

just as they come, without order or reflection, are inconsistent with one another, contradict one another. One might solve this by naïvely demanding that however inconsistent they are, one should have them fulfilled anyway. But this would be to desire the inconsistent, or, to use another word, the irrational. Do we really desire this? *Can* we? Of course, if a man says that he wants to be inconsistent, and is in earnest about it, there is no use to offer him rational *proof* that consistency is a good thing. For, by forsaking consistency he has likewise definitely forsaken the realm where any proof is valid for him, since the very laws of proof are laws of consistency. All one can do is to show him that he is seriously mistaken with regard to what he really wants. All history is against him, with its story of man's long search for truth in the sense of consistent truth; his constant and persistent application of logic and mathematics to his quest for an ordered universe. One might point out the practical fact that any one who persists in the desire to be irrational will soon destroy himself and thus all his desires, even the desire to be inconsistent!

So, we must revise the statement of our fundamental desire: it is, indeed, the desire that all our desires be fulfilled, that all our capacities be realized, but with this significant modification, *so far as our desires, our capacities, may be made*

*consistent with one another.* Self-realization is not merely *total*, but *rational*.

This means that progress toward the ideal self is the progressive organization of desires. The total self is a *system* of capacities, seeking unfoldment each with reference to all the rest.

At this point it appears that I am at once committed to the enterprise of listing all our fundamental capacities and the desires that express them, and of rationally organizing them into the vision or definition of a perfectly definite ideal self, which shall henceforth be the criterion by which shall be evaluated all morals, all doctrines of rights, indeed, all civilization. It has been tried. All teleological ethical theories tend to be attempts of this kind, with varying degrees of completeness. But I have no intention of embarking upon such an ambitious project. For, as I have argued elsewhere, the entire question is put wrongly when it is asked: Which one of the scores of moral standards bequeathed us by history is the right one? The illuminating truth is that any workable moral criterion whatever involves every one of the rest, as a matter both of logic and of practical experience. All conflicting moral ideals imply a moral end that includes them all and transcends every one of them. And this all-inclusive moral end is the true standard of right and wrong that ever remains the same amid all moral change.<sup>18</sup> Further, a definite and integral

part of the race's struggle for self-realization is the growth, through that very struggle, and only through it, of the knowledge of what it ultimately means.<sup>19</sup> Therefore any rigid definition in detail of the ultimate self we seek would be merely a temporary index to a passing stage of intellectual and practical progress.

At this point we have come upon another characteristic: *Total* self-realization means not only the realization of all desires in the sense of consistency with one another: their realization "so far as may be" means *development to their highest powers*, which, as indicated, cannot, in the nature of the case, be ultimately defined, but are progressively discovered through practical search, to which it is folly to set assignable limits. It may be, as Bradley holds, that men actually have *infinite* capacities; I do not insist upon this: but infinite or finite, they cannot be successfully measured. They are measureless.

And now, there is at least one other aspect of every self which is as fundamental, as permanent, as its desire for consistent and indefinitely progressive wholeness, and which, like consistency, modifies all our desires. I refer to the social nature of the self.

One cannot sunder the individual from society. To attempt it is to make both society and the individual meaningless abstractions. That there is

no society without individuals is a truism; that there can be no self without society is not at first so apparent: but a little reflection reveals that this also is the truth. Logically, the very definition of a self is impossible except in terms of other selves.<sup>20</sup> Psychologically, the phenomenon of self-consciousness is in terms of the consciousness of others. Where do I end? Can I exclude from my idea of myself at this moment my family, my friends, my associates, my community, my fellow citizens, my country? Or, look at the matter again in terms of desire. Truly seen, our ultimate desires not only must *take account* of the desires of other people, but actually *include* them. Efficiently to fulfil my fundamental aims in life is to find myself fulfilling those of others, not because they happen to be the objective conditions for getting what I want, a sort of tolerated nuisance, but because I am directly *interested* in their aims. It is useless for you to say with the egoistic hedonist that all this is an illusion covering up my innate selfishness—that when I aid others to their wants I do it merely for the selfish pleasure I get out of it. For if pleasure is the feeling accompanying the satisfaction of desire (and this is a quite prevalent view), how could I ever derive pleasure out of the satisfaction of other people's desires if my own did not reach out and embrace theirs? And if the self is defined in terms of fundamental capacities expressed through desires, then

society may be defined not as a mere *interrelation* of selves, but as an *interinclusion* of selves. Be as "selfish" as you please, it is a social self which you seek.<sup>21</sup>

Practically, this interinclusion of interest is growingly obvious with the unfoldment of civilization, which carries with it increased awareness of what we human beings really intend. More and more the political, economic, and cultural interests of individuals as well as peoples are seen not only to involve one another, but actually to include one another.

So we come to a further significant modification of self-realization as a criterion of rights: it is not only *total* and so, *rational*, and *indefinitely progressive* (or measureless), but *social*.

Need we go further? Should we attempt a more detailed definition of self-realization—draw a more exhaustive outline of the ideal self? I think not. It might be done; it has been done; but to be more specific would be to deny that very measurelessness, that indefinite chance of progress, which belongs to each man as well as to the race. I have named only those characteristics which must limit and define the essential foundations of *any* moral order. To be more rigid would be both intolerable and unnecessary: intolerable, because within these limits men have a right to dream their own dreams and to live their own lives—self-realization is *self-*

realization, and may well mean different things to different men; unnecessary, because within these fundamental conditions of self-realization alone, we shall find that we have enough to deduce and to classify most of the rights insisted upon in history as well as an adequate criterion by which new rights may be justified.

Suppose, then, we rest our analysis for the present and see whither it leads us. Our position now is: *Rights are the conditions necessary to total, rational, measureless, and social self-realization.*

What are these conditions?



## CHAPTER VII

### WHAT RIGHTS HAVE WE?

#### I

THE basic condition for human selves to become the utmost they are capable of becoming is, first of all, a matter of making current in civilization certain ideas or attitudes of mind necessarily involved in the *recognition* of this supreme right. For any civilization is ruled in the last resort by the prevalent evaluation that is put by men upon men. All else in the world of concrete fact, including the institution of government and the particular rights it sanctions, issues from this.

For instance, if men regard men as incurably self-seeking by nature (witness Hobbes), they will necessarily, if consistent, evolve a system of rights which will be almost wholly negative, designed to curb the rapacious encroachment of individuals upon each other, rather than to ensure affirmative achievement. If men insist upon viewing men as merely parts of a transcendent Society, they will evolve a system of rights in which Society and the State overbear the individual as secondary and incidental. If men esteem men as definitely deter-

minable by their fellows in the limits of their capacities, there will emerge rights of caste against caste, a system of special privilege. If men think of most men or of some men as permanently incapable of arriving at reasoned convictions concerning the guidance of their own lives as well as of the larger enterprise of the search for truth, the rights of freedom of thought and speech will take on quite definite and practical limitations in keeping with this conviction.

Viewed in this light, the right of the person to seek the end is seen to premise itself upon what I shall call the Rights of Recognition; which in turn are derived from an analysis of the nature of the end man seeks. If men are morally obligated and thus have the supreme right to seek rational, measureless and social self-realization, it is obvious that it is also their obligation to evaluate themselves and others as actually possessing the essential characteristics that make this goal possible. Thus, every man has the right to be recognized as Rational, Measureless in Capacities, and by nature Social.

Let us take up these three Rights of Recognition one by one. Since they are aspects of one indivisible end, and are thus vitally interrelated and even interinclusive, their order is not significant.

## II

*Persons are Social.* Since, as has been argued, the very nature of the self as well as its goal is social, each man has the indisputable right to be so regarded, and is, in turn, bound by a correlative obligation to so regard himself and others. And to discover that man is social in the sense that each man's ultimate aims really include the aims of others means for me to recognize that their aims are exactly as valid as mine because part of mine; and mine as valid as theirs because part of theirs. To put it otherwise, *each* man's search for his self-realization is absolutely conditioned by the assumption that *every* man's search is for the same. Of course, this assumption must receive wide recognition if it is to become an effective basis for the concrete institutions which guarantee it, whether public opinion or law. No man shall be regarded as a mere utility or means to the attainment of my own private purposes, for his being an *end in himself and for himself* is an integral part of my own purpose, the very heart and core of my nature as social.

*Persons are Rational.* Also since, as has been shown, man seeks not only self-realization, but a *total* self, made total and whole by reflective reason, he must, perforce, be regarded as a rational being,

capable of reason, with the right and obligation to use it to the extent of his ability, which will always be circumscribed at any one time, but which, like any reason, is, potentially, all reason. And since he is fallible and his goal is social as well as rational, he must take due notice of the best reason of every man; his right to decide social issues by his own reason is socially modified; his reason must ever weigh all possible reasons; he is to seek the social goal, in accordance with his own reason, indeed, but voluntarily subject to the reason of all.

*Persons are Measureless in Capacities.* This Right of Recognition also indubitably follows, since, as has been revealed in our analysis, every man's total self-realization is to be conceived as indefinitely progressive toward a flying goal, becoming increasingly more definite by growth and struggle. Desires and so capacities are defined only as we know them; and we know them only as they unfold through trial; and the process is never complete in any finite moment.

Now, there is little doubt that each of us is actually limited in his capacities, and limited each in his own unique ways—ways which make every person different from every other, not only in his possibilities, but in his particular stage of their development. Fully aware of the mere fact of such limits, the problem of the moral order is, neverthe-

less, to give to every man the chance as well as the encouragement to become the utmost that he is able; not only for his own sake, but for the sake of us all, whose interests embrace his and are thus by his enriched.

If it were humanly possible, with the surety of adequate knowledge, to inform each man of his exact possibilities of development—the precise direction of his capacities and their limits—it would seem a positive advantage to him to be told and even to be effectively encouraged, if not coerced, to take cognizance of such assured facts about himself. Indeed, he might then be said to have the *right* to be measured by those competent to do so, as the best precondition for attaining his unique fulness of life and as an economy of needless waste of time and energy. In the past, in certain conspicuous civilizations, this sort of measurement has pretended to be done, and has given rise to systems of aristocracies and castes. The irrationality of making such arbitrary hereditary limits is quite apparent to-day. But let us face a new factor, assumedly rational, introduced with the latter progress of modern science, particularly, the science of psychology. I refer to psychological measurement tests.

Already such tests have advanced to the point where particular aptitudes can be fairly calculated, various aspects of “intelligence” approximately de-

terminated. But even the most expert psychologist has not attained to the point of such technical omniscience that men are willing that the State shall give him the power, backed by legal sanctions, to assign to every man the final direction and limits of his total self, or to create groups or castes within which a person is henceforth to be regarded as irrevocably confined. Of all the natural sciences, the sciences of human nature are the most complex and the least amenable to the test of prediction, the ultimate mode of verification of scientific hypotheses. No matter how far such sciences progress (and their progress has been most encouraging), there will always be the possibility of serious error, and this in a region where any error at all is more serious than anywhere else. But even supposing the impossible: that such sciences of human nature were actually perfected and that each man could be definitely catalogued and pigeon-holed for the term of his natural life, and that the race's limits could be estimated for all time, it would defeat man's underlying incentive to become anything; the very fact of an absolute prediction of the course of our several lives and that of our race would kill that spirit of moral adventure which is back of all our valorous deeds—a spirit which believes that one's capacities at any one time are largely latent, that they emerge by progressive effort as well as by chance, and, in turn, induce new capaci-

ties to issue, and, as they become conscious, take on constantly new meanings with relation to all the rest.

Therefore, however much men may be willing to be guided, vocationally or otherwise, by psychological measurements (and they will be wise to be so guided so far as the progress of the science justifies it), they will insist upon being left measureless, regarded as measureless in capacities, so far as the total moral order is concerned, as the best condition for fairly discovering just what their limits really are. At the least, until scientific tests have reached the millennium, and, to change Plato's formula, Psychologists are Rulers and Rulers are Psychologists, this recognition that capacities are in the last resort measureless is the best guarantee that every man shall become the utmost that it is in him to become.

These Rights of Recognition are really parts of one indissoluble right: the right to be recognized as seeking the rational, social, and measureless self. They arise from an analysis of the end. Thus, as stressed before, these three aspects of man's search cannot really be *separated* at all, although they can be readily *distinguished*.

And now, besides these three Rights of Recognition, one other right emerges from the consideration of the right to pursue the end, becoming, indeed, synonymous with it: the Right to Life.

## III

The alleged Right to Life has had a unique place in history, appearing in practically every catalogue of rights and, in some sense, usually deemed basic, if not inalienable. The right has been defended upon almost every ground—as self-evident, as God-given, as “natural” in almost every sense in which this protean word has been employed.

Is there a Right to Life? If so, just how is it to be justified, and what, exactly, does it mean?

To say that a man has the right to seek self-realization in any sense and to say that he has the right to live *in that sense of living* are to say one and the same thing. It is not that the search for the end presupposes life in the bodily sense merely: no, the search for the end as we have defined it prescribes the meaning within which one's obligation to live and his right to bodily life are to be understood.

In the first place, to recognize the end as social is to respect not merely one's own life, but the lives of others. For me to kill another is to abjure my social recognition of him, as, like myself, an end in himself—not merely a means to my own private purposes. To kill my fellow is the ultimate unsocial act.

Further, seriously to acknowledge men as having



a fundamental right to be regarded as measureless in capacities is to deny oneself the right summarily and forever to curtail those capacities by dealing them death—unless, indeed, one is committed to the belief in immortality and can successfully show that the murder best helps the emancipated soul along the way of everlasting progress, as Shakespeare's Gloster pretended to Anne when he sardonically argued that his murder of her husband did but help him to that heaven for which he was fitter than for earth. But until the fact and nature of a life beyond bodily death is subject to conclusive proof and accepted by the masses of men; and, further, so envisaged as to make it certain that the killing of the body is actually a moral help to the one killed as well as to all mankind, the right to life will persist as synonymous with the right to self-realization. Even the institution most unanimously committed to immortality—the Church—does not encourage murder as a means of grace, although there are some ambiguous chapters in its history.

Again, to recognize every man as self-actively rational is to abjure my merely private judgment, much less my private impulse, as sufficient to condemn any man to be subject to my private annihilation, unheard before any tribunal of social reason, of which he, as well as I, is an integral part.

I have identified, (not deduced) the Right to

Life with the right to seek the social, rational, measureless self. I am sure the identification is sound, and, from a logical standpoint, I must regard the right in this light, fully acknowledging, however, that even upon my own basis of fundamental desire, there is apparently an easier justification of the right. For, one might say, if one is to found rights upon fundamental desire, surely the desire for life is the one universal and basic desire of all! Even biology assumes the will to live, the struggle for existence, as one of its ultimate data. But, truly interpreted, the desire for mere existence is not so ultimate as it at first appears. Men have repudiated and constantly renounced the will to live, whenever denied certain more ultimate desires that make life worth while. "Give me liberty, or give me death!" No, man's ultimate desire is not for mere life, but for life with certain qualities, the denial of which has given rise to suicide, martyrdom, and battle that led to innumerable deaths. Because bodily life is a *precondition* to self-realization, and so wanted as such, is no reason for calling it the ultimate and most fundamental want. I therefore return to my original thesis: The right to life and the obligation to respect it are the same as the right and obligation to seek social, rational, and indefinitely progressive self-realization.

Is there any exception to this right? In other words, is the right to life absolute? Is killing in

self-defense excusable, whether by society or by an individual? May society kill criminals? Does the right to life involve the right to take one's own life—the right to suicide?

At first sight it might appear that, if we are faithful to the logic of the situation as I have been depicting it, we are compelled to say that, unless we adopt the hypothesis of immortality, the right to life is indeed absolute; that no man or group of men has the right to kill anybody for any reason whatsoever. For, suppose we justify killing? How shall we do it? By showing that by killing men, social self-realization will be better attained—that *all* men will benefit thereby. For the social goal includes *all* men. It is a fallacy to urge "the greatest happiness of the greatest number." It is the greatest welfare of *all* that we inevitably are bound to seek when we are true to our own meanings. The ninety-and-nine were safe in the shelter of the fold, but that was not enough: the life of the hundredth was priceless and must be gathered home. And this not because of any sickly sentimentality, but because of the nature of the goal men really seek when they become fully aware of themselves as including in their aims the welfare of all.

But, more closely scrutinized, the logic of our position does not at all warrant this drastically radical conclusion. There is no *right* a man can legitimately claim apart from his recognition of

the *obligation* upon which it is based; if he abjures the *obligation*, he straightway forfeits the *right*. Otherwise, the one guarantee of all rights—that is, their responsible recognition—is swept into oblivion and so the rights themselves. If the man who kills can be interpreted as proclaiming to the world: “I hereby renounce the *obligation* to respect life,” he may be said to be also renouncing the *right* thereto. He has defied all men’s rights including his own. He has set himself definitely outside the whole moral order. He has made himself a moral outcast. This applies to both individuals and States when their very existence is decisively attacked by physical force; also to the executions by the State of wilful murderers; although in the latter case, the nice question of corrective justice always arises: the murderer may be capable of reform, may be led to repudiate his deed, and thus saved to the moral order.

Does the right to life involve the right to take one’s own life? The right to suicide also is subject to our general criterion: If the point is actually reached in any person’s life when the goal of rational and social self-realization is no longer possible for him, because, say, of painful and incurable disease, or because he has become an intolerable burden or hindrance to the legitimate self-realization of others, it seems rational that he be excused from living. But by far the great majority

of suicides are acts issuing from impulse, not moral deliberation; are thus essentially selfish and irrational, and so are as morally blameworthy as any acts not duly justified by reflective reason. To ensure that the act is truly a sane conclusion from moral deliberation, unprejudiced by merely personal and temporary impulse, it is probable that no man is really justified in such a final and irrevocable deed without the sanction of the community which his total interests include and which include his. It is conceivable that there are cases where such sanction might be given. "Sir Thomas More, who died for his constancy to the Roman Catholic faith, suggests in his *Utopia* the expediency, not merely of permitting, but of recommending suicide to those suffering from incurable diseases. . . . Not a few physicians have felt the terrible cruelty of a moral code which makes it a positive duty on their part to prolong hopeless suffering. Yet it is clearly a matter that cannot be left to individual responsibility."<sup>1</sup> In western civilizations, however, it will be some time before there will be any widespread inclination directly to approve suicides, although there is a tendency to excuse some of them after the fact, and even to glorify those who, while not suicides in the ordinary sense, voluntarily put themselves in the way of certain death for the sake of a cause or to avoid the betrayal of ideals deemed priceless.

These, then, are the rights arising from an analysis of the supreme Right to the End: The three Rights of Recognition and the Right to Life, qualified to mean the right to seek the end.

All remaining rights will be found to arise from an analysis of the instrumentalities necessary to attain the end. They may be subsumed under the Right to the Means.

#### IV

*Rights as Means* divide themselves into two main sorts: those coming under the *Right to Share in the Means*, and those coming under the *Right to Ascertain the Means*.

It is obvious that a man's right to pursue the end would be an altogether empty right if he had no means of achieving it. In other words, the right to the end manifestly involves the right to the means. On our premises, however, this right is qualified for each person by his capacities at the time and conditioned by the capacities of all, since the means exist only for the unfoldment of human capacities to their highest powers. I can claim the means as my rights only in so far as I can use them; although the chance to show my ability to use them must be as free and open as the same allotment of chance to every one else will permit.

The most basic of the means necessary to self-

realization may be called, broadly, economic, and give rise to Economic Rights. All men, so far as they have the right to life in *any* sense have economic rights of *some* kind, although just what these rights shall be in detail at any time depends upon the particular stage in our progress in mastering the resources of nature and of our expert knowledge of how to adjust them to our purposes. It has been the general experience of mankind that one of the economic conditions of living is the right to at least the use, if not the private ownership of property in some sense. Such fundamental conditions of life as food and shelter would be difficult without it. Under the right to the means of life should come other economic rights, so far as they can be validated as means, such as the Rights of Labor, as well as the rights to the benefit of the resources of the applied and technical sciences, such as the right to good sanitary conditions and to skilful medical care.

But, as we have seen, we cannot, in discussing life as a right, use the term "life" in the very partial and abstract sense of mere existence. We must again remind ourselves that by "life" we cannot mean solely, or even primarily, the mere prolongation of living, but life with certain *qualities* which we demand of it, life of a certain *kind*. Denied these qualities, we repudiate life and consider its prolongation a positive affliction. Thus, when we

say that a man has the right to the necessary conditions of life, we do indeed mean conditions that contribute to a healthy, long life; but even this is ever for the sake of and modified by the qualities involved in the realization of our basic desires, the unfoldment of which makes living worth while. The serious recognition of this fact modifies profoundly the whole structure of economic rights, as well as of other rights. Surely it is one thing to base the distribution of economic goods upon the right and obligation of every man to the healthy prolongation of merely bodily life; quite another thing to base it upon the right and obligation to seek to the full extent of his ability a life with certain indispensable predicates, progressively developing, and including the interests of every other man.

At once we come upon a whole new region of rights, which embrace not only the necessary means of mere life, but the conditions requisite for life considered as a dynamic evolving of human powers, indefinitely progressive, and subject to the right to be regarded as measureless in those powers. Economic rights enlarge to include every condition necessary for such evolution, modified always by the social nature of such rights. A final catalogue of such rights cannot be made, in the nature of the case. They are ever relative to the stage of progress man has made in economic knowledge and power;



and to this new realm of economic rights are added such rights to the means of culture as a civilization can count among its resources, including the sciences and the arts; and the right to share in any other resources current and valuable as means to the end, that is, so far as they minister to the basic needs of the human spirit, subject to the qualifications heretofore named: the capability of each man to use them to the best advantage of himself and of the common weal.

## v

Now, it is evident that if men have a right to the means of their self-realization these means must be discovered and ascertained by somebody. A large part of man's age-long search for truth has been in the avowed interest of furnishing the means—the resources—natural and social, economic and cultural, scientific and esthetic, for attaining his purposes. Ultimately, this is the function of social reason. Whose obligation is it to perform this function? It belongs to every one who has the obligation to seek the social and rational end. But *all* of us are bound by this obligation, and so all of us are bound by the obligation to ascertain the means, to the exact extent of our capabilities, little or great as they may be. Within each man's limits, the search for truth is every man's business and so

every man's right. Further, it is his business and right to utter his convictions concerning it, not merely for the sake of his self-expression, but as an indispensable factor in every other man's search for reasoned truth. Relieve any man of this obligation and right, and our common search is robbed of some special point of view, some unique interest, which might become a contribution, however infinitesimal, to the sum total of human efficiency. Thus, every man has the obligation and right to Thought, Speech, Assembly, always subject, once more, to the qualifications of time, place, and the social good.

But looking at the matter in another and even more vital way, the Right to Ascertain the Means becomes a valuable and indispensable part of the Right to Share in the Means themselves. For, the end which the means serve has been established as rational, social, and indefinite self-realization. Well, how more efficiently and surely shall a man become increasingly rational than in the constant exercise of his reason in matters whose issue is his very life, physical and moral? How shall a man more certainly attain that social vision and reality which is part of his quest than by his continual coöperation in ascertaining the means by which he grows through society and society through him? And how shall a man more truly discover his indefinite powers than by the necessity of discovering

and adjusting the resources of civilization to them—by constantly exercising these same powers in the service of their development?

## VI

We have now attained in general outline the beginnings of what we set out for in this chapter: a tentative classification of rights, based upon a criterion capable of defining them, as well as of adding to them. Let us summarize this classification, so far as we have achieved it:

## TENTATIVE CLASSIFICATION OF RIGHTS

I. THE RIGHT TO THE END (*synonymous with the Right to Life as self-realization, and involving*):

*The Rights of Recognition:*

- (1) Persons are Rational
- (2) Persons are Social
- (3) Persons are Measureless

II. THE RIGHT TO THE MEANS (*reciprocally conditioned by the capacities of each*):

1. *The Right to Ascertain the Means* (Rights of Thought, Speech, Press, Assembly, etc.; so far, in a non-political sense)
2. *The Right to Share in the Means* (Economic Rights, Cultural Rights, etc.)

A few remarks about this classification:

Every right named is a moral right based upon a moral obligation—that is, all rights are ethically founded. To transform this list into one of funda-

mental moral obligations to oneself and others, one need only substitute for the word "right" the word "obligation." For instance, the right to pursue the end is grounded upon the obligation to pursue it; the right to share in the means, upon the obligation to use them to the extent of one's abilities. Ideally, a person forfeits a right when he repudiates the obligation upon which it rests.

In so far as the Right to the Means follows from the Right to the End, the latter may be considered *fundamental*, the former *derivative*.

While I have included here under the Right to the Means some of the rights most emphasized in history, it is obvious that no exhaustive list is possible. As has been amply indicated, particular rights under the general Right to Share in the Means are contingent upon the times. What were once particular rights may disappear; what were never yet rights may gradually emerge, as, for example, in modern times certain new rights have arisen with the change of the economic structure of society and with the advancement of the applied sciences in mastering the resources of nature. One may have a right to sanitary conditions now: but in the sense we now can have them, they were impossible a century ago. Thus it is quite clear that the author differs from all such theorists of natural rights as proclaim that all rights are unchangeable and can be exhaustively listed once and for all.

## VII

Thus far, a conspicuous omission has been made and so our classification, even in its basic outlines, is not complete. Nothing has yet been said of a region of "rights" commonly and correctly considered to be of immense importance: the region of "rights" belonging to a person as a member of the State. Where shall we place such "rights" traditionally known as political rights, civil rights, legal rights? If they do not belong to the Right to the End, surely they not only belong to the Right to the Means, but are the most important of these instrumentalities by which men seek their goal.

I shall insist upon the following thesis: The political State adds no new rights whatsoever, but exists, rather, to serve as the supreme, although not the only guarantor of the moral rights we have been reviewing and such others as can be added to them by the criterion that creates all rights. To be true, the general right to *have* guarantees for one's rights, and thus to the sort of State that will best guarantee them, is conceded, and is a necessary means to the end. But once the right to the political organization is granted, the State itself creates no new rights; it merely recognizes them, protects them, encourages them, and makes them effective through its agencies of regulation and

control, the chief of which agencies is coercive law. Thus, the State does not create the Rights of Thought, Speech, Press, Assembly: it can only guarantee them. The State is not the source of fundamental Economic Rights or of Cultural Rights; its supreme function is to see that they are made secure, in so far as it is necessary for them to be secured by the political structure, rather than by other social sanctions.

But, one may object, while the Rights to the Means (such as Economic Rights) may be guaranteed by the State, how can the Right to the End be so guaranteed? For instance, how can the State put into a law the Rights of Recognition? How coerce its citizens to regard men as Social? Rational? Measureless? The answer plainly is that such rights cannot indeed be incorporated into any one law: yet they may well become the effective framework and spirit of *all* law, as, in some measure they have been in the history of American democracy. In other words, the Right to the End, including the Rights of Recognition, can best be secured by expressly guaranteeing the means necessary to pursue this end; although bills of rights and constitutions may well imply the Rights of Recognition more directly, in so far as they stipulate how men are to be regarded, as a fundamental condition prescriptive henceforth for all that the State shall do.

This view of the function of the political State as the guarantor of rights is in strict accord with that of the writers of the American Declaration of Independence, when they insisted, "That to secure these rights, Governments are instituted among Men." It is also in keeping with the French Declaration thirteen years later (1789): "The end of all political associations is the preservation of the natural and imprescriptible rights of man."<sup>2</sup> Laski insists that the State exists to protect rights, not to originate them, adding that "it is only by maintaining rights that its end may be secured. Rights, therefore, are prior to the State in the sense that, recognized or no, they are that from which its validity derives."<sup>3</sup> No, the State does not create rights. Coker rightly remarks that "no juristic scholar makes the state a general arbiter of right and wrong. On the other hand, jurists of all schools now generally regard law as an instrument for the furtherance of human welfare."<sup>4</sup>

We return to our general position: Political and legal rights are really rights to such guarantees of rights by the State as will best secure them.

"As will best secure them." Does this mean the right to self-government? The right to the particular form of the State known as Democracy? Well, this is the central problem of this book, and will be considered next, together with such vexatious questions as: the relation of the State

to other social organizations guaranteeing rights; how far rights are to be secured by law, and how far by other agencies; the limits of State regulation and control; whether its guarantees are merely negative—the coercive clearing of hindrances to self-realization—or whether they have a more affirmative function. These and other such questions can be adequately answered only in terms of our further discussion of what sort of political State best guarantees human rights.

But first we must now add to our classification of rights a third group, as follows:

III. THE RIGHT TO GUARANTEES OF RIGHTS (*through sanctions of society, including those of the political State*)

1. *Guarantees of the Right to the End*
2. *Guarantees of the Right to the Means*
  - (1) *Guarantees of the Right to Ascertain the Means*
  - (2) *Guarantees of the Right to Share in the Means*

Note again that the political State does not create the rights it guarantees: it can only recognize and secure them. A right can be merely moral; it can be both moral and legal; but it can never be merely legal. For if the allegedly “merely legal” right serves the moral end, it is because it guarantees a moral right; if it does not serve this end, it is either useless or inimical to the moral order, and though in fact, is not in right a law.<sup>5</sup> If not too destructive



of human rights, it will be obeyed for the sake of preserving the idea of law; but in the name of human rights, it will be attacked sooner or later as unsound and in the long run repealed. Which rights shall be embodied in law and also become legal rights depends upon whether they can best be secured by the legal sanction rather than by public opinion and other sanctions outside the positive law, and upon whether men may profitably sacrifice the immediate effectiveness which punitive law might bring for the sake of the moral values of free initiative and its greater effectiveness in assuring rights in the long run.

What sorts of guarantees do our rights, once established, need? What form of the State will secure them best? We started out upon this analysis of rights as the best approach to the evaluation of democracy, as well as to its fuller and more definite meanings. We are now ready to ask our crucial question: Is democracy desirable?

## CHAPTER VIII

### THE CASE AGAINST DEMOCRACY

#### I

**T**HE desirability of democracy or, indeed, of any form of government, assumes the previous desirability of some kind of political State. Is this assumption valid? Do we need government at all as a guarantee of our rights?

Well, as we have insisted, the right to rights certainly carries with it the right to such guarantees as are necessary to protect and further them. If rights, in whole or in part, are best protected and furthered by laws applicable to the whole of a given society, (usually resident within specific territorial boundaries), and if these laws become ultimately effective through coercions of various forms, we have what is customarily called a political State, consisting of government on the one hand and the governed on the other, whether these be theoretically identical (as in democracy) or not. That such a super-organization, coercively regulative, is actually necessary to ensure human rights is best seen by trying to conceive its absence. The philosophical anarchist urges the possibility of such a

conception, and even its moral advisability. Some anarchists, however, admit that such a non-political society is a more or less remote ideal to which men should indeed be educated, but that it will be a long time before government will entirely disappear. In other words, however theoretically undesirable, some form of the political State is a necessity now. And even granted that the political State will eventually disappear, the anarchist usually insists upon its virtual reappearance in a new mode, his insistence being disguised by substituting for "law" voluntary coöperation or agreement, and for "coercion" public opinion or social pressure, which still give us both law and coercion (indirectly involving even physical coercion) in however special a sense. The anarchist's society is still a State; and his voluntary agreements and their sanctions are still a form of government, however near the vanishing point such government may come, and even advisably come. "The philosophical anarchist is wholly right in his solicitude for the individual will. What he fails to see is that it is the very nature of these wills which welds their circuits together in an enforced unanimity of action for objects which they could not attain by themselves." <sup>1</sup>

Still, one might argue that while law and coercive sanctions are necessary to protect rights, they need not be functions of an all-inclusive State,

but of social groups, each representing some fundamental interest, such as the economic or the religious, until all interests are served.

But, since all human interests are interrelated, their agencies of control must likewise coöperate in common guarantees and their sanctions; and this implies the political State, whatever qualifying theory one may espouse as to the relative functions of political and other forms of association. "The State, it might be said, is thus conceived as the operative criticism of all institutions—the modification and adjustment by which they are capable of playing a rational part in the object of the human will." <sup>2</sup> "The State is the supreme controller of all social relationships." <sup>3</sup> "The function of the State" is "the maintenance of the social order, or of the necessary conditions of the moral life of its citizens." <sup>4</sup>

To put it otherwise: Rights are interinclusively social, and their guarantees must be the same. This means a political State.

## II

Granted that some form of the political State is necessary to guarantee rights, is Democracy the best form of such a guarantee?

We must not beg the question by assuming a "natural right to self-government," as has some-

times been done historically, as, among others, by Milton, Locke, Rousseau, Paine, and those who inspired the American Declaration of Independence. Of course *if* we have a right to self-government we have the right to democracy, since the two, by definition, are identical. No, the right to democracy, if it is at all a right, must be conclusively proved to follow as a right derivative from the other rights we have named, or shown to be the most favorable guarantee of these rights. Let us take up the second of these two questions first: for if it can be shown that democracy affords the most favorable guarantee of rights, then the right to democracy follows as a matter of course.

So far as the political State is concerned, the supreme guarantee of rights is a system of coercive law, justly executed and administered. Democracy proposes that the determination of just what this body of law shall be, as well as the mode of its execution and administration, shall finally rest with the people, through their exercise of the franchise. By "the people" is meant, at the minimum, "a considerable proportion of them," for example, "the adult males of the community."<sup>5</sup> Bryce stipulates that this "considerable proportion" should be, "roughly, at least three-fourths" of them, of which the will of the majority rules.<sup>6</sup>

Now, at first sight, it is not at all apparent that such a form of government is the best to secure

human rights. In some ways, it might seem to be the worst. All the adverse criticisms of democracy reviewed in Chapter I descend upon us again, and new criticisms emerge, all made especially formidable when we assay democracy more specifically as a guarantee of the particular rights it is supposed to protect.

The whole question resolves itself to the question of the competence of human nature in the average to best secure its own rights, since democratic government is to govern by just such average human nature. And throughout this discussion we shall be thinking of average human nature as we find it in the civilized countries of the occident in the twentieth century, particularly in those countries where democracy already prevails.

What is there, then, in such average human nature, which makes it inadvisable as the efficient arbiter of the guarantees of its own rights?

Surely the first and fundamental precondition for efficient self-government is an alert awareness of the end to which the political State is the means—a working knowledge of the nature of the moral order and the rights therein implied, which determine the general spirit as well as the specific detail of all the laws and policies of government. Do Bryce's three-quarters of the citizens possess even the shadow of such enlightenment? Do half of them? Or even a quarter of them? The question

itself turns into a *reductio ad absurdum*. I am not here insisting that the particular system of rights expounded in this book must be understood and accepted by the average man before democracy is possible; I merely insist that he shall be conceived as having *some* formulation of the end which government serves as a guarantee, and that this formulation shall be sufficiently precise, defensible and current to make political decisions at least provisionally rational and acceptable. Is the average man ever likely, short of the millennium, to be blessed with such enlightenment? One doubts it. And with regard to the particular end of self-realization as we have actually been defining it, that end which is the supreme right from which all other rights are deduced, and for the attainment of which all the instrumentalities of civilization are to be assayed and all government to contribute adequate guarantees, the case seems especially hopeless. Take the rights of recognition involved in the adoption of such an end. "Persons are Social." Does the average man have any conception of what we have termed interinclusive selves, let alone a conception convincing enough to issue in effective action? Is he not incurably bound up with what he thinks of as his own welfare, ignoring—yes, even using—his fellows to achieve it, in spite of the fact that his success may involve their failure? The individualism of the average citizen of democracy is

not only admitted; it is actually a boast. And the self-seeking of democracy's professional politician to the point of corruption is one of democracy's most constant traits, however much deplored by idealistic but impotent reformers. The larger selfishness, the enlightened selfishness, that recognizes that no man's interests can be attained without his free and constant awareness that the interests of every other man are really an integral part of his own, is surely beyond the intelligence of the average citizen.

Another right of recognition: Persons are Measureless in Capacities. Each man you meet may insist upon this for himself; but does he accord the same recognition to others? As a matter of fact, does he not even insist upon it for himself chiefly in the form of resentment against the attempt of any man or group of men aggressively to assert a fundamental superiority over him? Really to recognize men as measureless is to have faith in their indefinite progress as individuals and as parts of a society whose ever unfolding institutions survive all particular individuals. But, notoriously, the average man is bound to his traditions, his established customs and routine. He is hostile to new ideas and innovations in the habits of himself and of his social milieu. "His philosophy of life consists for the most part of conventional principles that are provided by pulpit, party, or counting



house." Thus, "a skilful appeal to his prejudices or to his fixed ideas never fails to bring a favorable response. On the whole, he prefers orthodoxy to scholarship in his minister, loyalty to party rather than political wisdom in his statesmen, the preservation of the profitable *status quo* in his business rather than sacrifice necessary for the social or economic betterment of the community." <sup>7</sup> Observing the specific instance of American democracy, Bryce finds that "the Americans are a conservative people. . . . They are satisfied with the world they live in, for they have found it a good world, in which they have grown rich and can sit under their own vine and fig tree, none making them afraid." <sup>8</sup> The indictment may well proceed, according to Coker, to point out that "Discoveries and inventions, new ways of living or thinking, make slow progress among the masses. Democracies are, therefore, the most conservative of all forms of state." The ordinary man "lends ready support to any sort of political or social pressure that tends to standardize human behavior—particularly where the standardization is a leveling down to his own mental and spiritual plane." <sup>9</sup> This is in strict keeping with Maine's insistence that popular government stereotypes opinion and is inhospitable to change.<sup>10</sup> Further, this spirit of anti-progress finds decided expression in the legislation of democracy, which, obsessed with the passing demands of the

moment, ignores the rights of future generations. With such pronounced predilections for custom and established usage, issuing in such inertia and lack of foresight, it becomes difficult to believe that the average man has either the theoretical or effective recognition of the measureless capacities even of himself, still less of his fellows.

Or, consider the remaining Right of Recognition involved in the nature of the end: Persons are Rational. The end is to be a total self, made total and whole by reflective reason. And since each man's reason is partial and imperfect, he must ever weigh the reason of his fellows before coming to effective conclusions upon the issues he is called upon to decide.

Merely to recite such a condition for conceiving and attaining the end, then to envisage the average man as fulfilling it, is to arrive at absurdity. We are all familiar with the results of recent intelligence tests of the United States army, not an unfair cross-section of our citizens. The average man sometimes reasons, usually within the narrow limits of his daily walk and trade: but is reason his prevailing motive? Has he any idea of duly surveying his desires, determining their relative values, and arranging them into a rational system? Of course not. The ends he seeks are dictated by such common human urges as ambition, fear, hate, love, greed, without any too much attention to consistency.

In fact, the common man does not even greatly care for the virtue of rationality; he actually suspects logic, and resorts to it (quite inexpertly) only as it serves his own ends, with whose initial choice logic has little or nothing to do.

So the incompetence of the average man seems to make impossible the one fundamental precondition of democracy, namely, an effective knowledge of the end for which democracy is the means. The Right to the End is an empty right as long as the citizen is ignorant of what it is. How can he politically guarantee a right of whose nature he knows nothing? How guarantee through the spirit of the laws and through governmental policies the three Rights of Recognition, which the end indubitably involves, when he is conscious of no recognitions to guarantee?

### III

And if the average man is not intelligent enough to know the goal of democracy, how can he be said to be intelligent enough to determine the means, let alone to guarantee them by adequate political decisions? How perform the miracle of discovering, organizing, and making sure by coercive law what is necessary to achieve a purpose undefined? What use are the rights of thought, of speech, of assembly, to an electorate preponderantly uninformed, illogi-

cal, individualistic, inordinately conservative, and lacking in foresight, when the very contradictory of these traits is vitally essential to make such liberties anything but a name?

The case becomes still more exigent when we realize that even if the voter were adequately aware of democracy's end; that even if the Rights of Recognition were universally acknowledged, the average man would yet be pitifully helpless in any attempt to assay and adjust the extremely complex instrumentalities of present-day civilization to the service of democracy's aim. The increased complexity of modern life has brought with it an ever increasing complexity of knowledge and an age of high specialization. The varied resources of our modern living can be understood and mastered only by experts, highly trained in the physical, biological and social sciences; a knowledge which, in the grand total, cannot by any possibility be handed over to a lone expert, still less to the average citizen, now or at any time. It has ever been that "progress is a function of aristocracy, for advance in all things has come through differentiation."<sup>11</sup> Yet democracy, so the charge runs, must proceed on the assumption that the average man has precisely this knowledge that only trained specialization can give. He must constantly decide issues that involve it: issues in economics, in education, in dietetics (as exemplified by prohibition

laws), in biology (as in the issue about the teaching of evolution), in religion, even in the sphere of artistic projects. "In literature, art, morals, and religion he is the final arbiter; hence the questionable exploitation of elemental human instincts in the photo-play, the glorification of obscurantism in the pulpit, the tawdry and commonplace sentimentality of the cheap novel, the impossible wit of the pink Sunday supplement, the utterly inane songs of the popular vaudeville. No oriental despot ever exercised a tithe of his sway for he rules the minds, not the bodies, of men, and there is no appeal from his arbitrament."<sup>12</sup> How many economic issues are so simple that mass judgment is possible, or, if possible, of any value? Still worse, democracy, it is freely charged, degenerates into a function of the primitive "psychology of the crowd," obsessed by elementary impulse, by emotion, by prejudice, and living only in and for the present.<sup>13</sup>

## IV

And it must not be forgotten that to all the competence a sane democracy demands of the average man in order to assay the means, he must possess in addition the specific political wisdom to know not only *what* to guarantee by government, but *how* to guarantee it, and to guarantee it best. Yet, the political ignorance of the average man is

as much a byword as his ignorance in other fields of knowledge. "His thought, like his daily work, moves in a small circle; his imagination fails to grasp conditions unlike those of his own life. Thus he is not well qualified to form a judgment on the larger questions of policy." He "does not understand the value of special knowledge, thinks one man as good as another for official work, refuses to pay salaries to a judge or an administrator twice or thrice as large as his own net income." He "may fall prey to plausible fallacies and be captured by vague promises to redress grievances of which he feels the pinch." <sup>14</sup> Politics is a science, and as much as the other social sciences requires experts to apply it as an art. "What better reason is there that every one should have equal power in politics than that every one should have equal power in law or medicine, or in business, farming, brick-laying, or forging?" <sup>15</sup> "Most of the problems of modern governments are composite and complex, and have to be dealt with by the few. . . ." <sup>16</sup> Yet what happens? This absurdity: that, "In voting, every vote has the same effective value. One man may have conscience, knowledge, experience, judgment. Another may lack all these, yet his vote counts for just as much in the choice of a representative or the decision of a momentous issue. The wisest and the most foolish are put on the same level. Opinions are counted, not weighed." <sup>17</sup>

If it be answered to this arraignment of the average man that even if he is not an expert, he is at least competent enough to elect experts to represent him, the answer seems at once nullified by the plain facts: the masses elect incompetents like themselves, who keep themselves in office by adjusting themselves to the mediocre level of the mass thought that chose them; the expert is crowded out of politics and chooses to invest his talent in other pursuits. Or, if experts are resorted to, especially if it be with regard to any major issue, the masses are suspicious of them; they may even christen them with ridicule and call them by the derisive epithet, "brain trust." Their own commonsense, they feel, or somebody's commonsense, would be much saner and safer.

Thus, conspicuous leaders in politics, if conspicuous by their competence—those who are gifted beyond the crowd in their political knowledge and the ability to apply it to concrete problems—lose their proper function of expert guidance through the necessity of pandering to mass opinion. The inevitable result is the gradual and sure decline of the competence of leaders wherever democracy prevails. Ralph Adams Cram graphically and tragically pictures democracy as reducing "all mankind to a dead level of incapacity where great leaders are no longer wanted or brought into existence, while society is unable, of its own power as a whole, to

lift itself from the nadir of its own uniformity." <sup>18</sup> And the same leveling tendency, so it is charged by eminent critics, applies to the exceptional man not only in politics, but in every walk of life. Equality is construed, by the average man's twist, to mean sameness, conformity to type; and the exceptional individual is discouraged, since he, too, like the politician, whether he be novelist, dramatist, painter, sculptor, architect, or musician, has to cater to the crowd psychology to succeed, and has to compete strenuously with those who can do so. Not only the arts, but the sciences are vitally affected, especially in so far as scientific research becomes part of the program of educational institutions controlled by the democratic State, where practical results which can be understood by the common man become the final criterion of scientific efficiency. What Nietzsche says of Christianity is quoted against democracy as equally applicable, since it, too, "preserves the inefficient, cowardly, and degenerate and wages war upon the higher types of men." It "takes up the cudgels for idiots, and utters a curse upon all intellect." <sup>19</sup>

Thus the plain facts run drastically counter to rights in the realm of means, as we have insisted upon them in our exposition of rights: the right of every man to share in the means according to his proved capacities and powers, so that the gifted man has his own unique chance to live his own



unique life and to serve the social order in his own unique best way, and is encouraged and stimulated as a valuable asset to civilization instead of discouraged and discredited as an undesirable deviation from popular "normalcy." Democracy, instead of vindicating any true equality and freedom, challenges both and makes them impossible.

## v

The considerations so far mentioned would seem to be more than enough to damn democracy as an adequate guarantee of human rights as we have defined them; yet the arraignment one might draw up is far from complete. For, the utter incompetence of the voter is matched by another trait, his indifference; indeed, his incompetence and his apathy are reciprocally causal: each trait aggravates the other. The man who does not know what he is about is also the man who has little interest about it; and his lack of interest deprives him of the main incentive to competent knowledge. This indifference is further increased by his manifest helplessness before the adroitness of democracy's politician, who makes a highly specialized trade of politics. In the face of his skilled manipulations the average man is singularly inept. This apathy of the citizen becomes the politician's opportunity; and the more he becomes intrenched in his skilled

power, the more apathetic the citizen becomes, except for sporadic efforts at reform, which are attempted with more righteous passion than effective wisdom, and which usually fail from lack of sustained purpose and knowledge of technique, which the professional politician possesses in surprising measure as the necessary equipment for his highly specialized life-work. Further, the party system ideally lends itself as a tool for the professional politician, serving to accentuate the helplessness of the masses whom he exploits through their party loyalties. These parties, in turn, tend to be controlled by big business. "The evils of political parties have been treated most fully by Ostrogorski, who gives a gloomy picture of the part played by them in government. It is to the inadequacy of the party system that he traces the degradation of legislatures, the corruption of state and city administration, the lack of public responsibility, and inadequate leadership. Parties, Ostrogorski shows, especially distort public opinion so that their own ends rather than social welfare may be achieved, and in this the money interests are usually dominant. Parties thus become levers for private interests. This state of affairs can exist because of the general subordination of politics to money making, the general toleration of corruption so long as it involves no direct personal loss, and the deadening of sensibilities through crass materialism." <sup>20</sup> The

control of the guarantees of a people's rights by professional politicians, seeking their own selfish ends would be fatal enough; but when these same politicians are, in turn, directed by materialistic ideals of the moneyed interests, it is clear that government, instead of guaranteeing the people's rights, becomes transformed into a device that not only ignores the spiritual aspects of the moral order, but guarantees economic rights only in the restricted and distorted sense of protecting the welfare of a special class.

## VI

At the beginning of this book, we cited other criticisms of democracy, such as its sorry inefficiency, its wasteful extravagance, its helplessness in times of crisis, its instability. The inadequacies of democracy that we are now reviewing are those most directly related to our specific question as finally developed: Is democracy the form of the political State best adapted to successfully guarantee the rights of man in the sense in which we have understood them? Are the masses of men capable of guaranteeing their own rights through self-government better than through some other form of guarantee? So far the answer seems hopelessly negative. Your average man does not even know the purpose of democracy; if he knew it,

he would still be woefully ignorant of the complex means to achieve it, or any large human purpose; and, finally, he is ridiculously inexperienced in the political knowledge and skill to guarantee either. He is incompetent even to select leaders with the knowledge and skill that he lacks.

As an ultimate note of despair, one might go one step further, as some writers have done, and attempt to show not only that democracy is undesirable, but that, in its very nature, it is absolutely impossible, and that its supposed existence at any time in the world's history is nothing but a pathetic fiction. How can the mere fact that a man has the right to vote and even exercises it mean that he really "determines" his own liberties? He is born into a complex political State, its vast system of laws already made, its guarantees already set up, thrust upon him by inheritance, not in the least made by him; a political State with all the stubborn resistance to change belonging to established social institutions. His is merely one vote out of millions, say; and this vote he can use only with reference to the few ready-made issues which the politicians see fit to submit to him. So far as self-determination is concerned, he is the more unfortunate if he votes intelligently: for then he votes with the minority, which, *ipso facto*, loses, since the majority rules. The very conception of democracy, we are told, contradicts itself the moment

one attempts to put it into actual practice. We cannot have direct democracy, so democracy means leaders, which, as we have seen, are far from likely to be the same as the intelligent minority; to have leaders is to make organization necessary, both to choose them and to run the machinery of organization; organization, to be effective in a complex civilization, itself becomes more and more complex, requiring more and more the specialized skill of the leaders, and thus removing it more and more from the people, leaving it under their increased control. In other words, democracy, no matter how earnestly conceived and willed, inevitably transforms itself into rule by a minority class, which, the longer it rules, the more deeply intrenches itself in power, recognizing the will of the masses only to mold it skilfully to its own purposes.<sup>21</sup> "Thus, what purports to be the will of the people is largely a factitious product, not really their will."<sup>22</sup>

And there is a reason for this practical defeat of democracy. It doesn't just happen. It is in the very nature of the case. It is alleged that the incontrovertible facts of modern biology and psychology are against it, revealing to us, as they do, the essential differences among human beings of a given race, as well as the differences of races among themselves. Nature herself insists upon putting men into widely dissimilar classes; and, as if

this were not enough, she makes these classes relatively permanent (and this is fatal to democracy) by inheritance. Thus, government will always be a function of a class skilful in gaining and holding power. Democracy may ignore it in theory, but the inevitable trend of affairs will betray its blindness sooner or later. Democracy has never existed at all, except in name. It cannot even exist as a sensible ideal, for it is irrational. The supposed "historical trend toward democracy" is belied by the plain facts. "History is a sound aristocrat."

Democracy, it is thus argued, is not only undesirable as the best guarantee of human rights; even if one admitted that a democratic State could guarantee them in the least, such a State is impossible.

## VII

If democracy is thus shown to be undesirable and, indeed, in view of the fundamental traits of human nature, actually impossible, and so, historically a myth, the clear counter-query arises: Is there any other form of government which is able to transcend the fatal defects of the average man and to better guarantee not only his rights but the rights of all?

The answer, at first sight, seems absurdly easy: The farther away government is removed from the ignorant verdicts of the common man and becomes

the function of enlightened experts, the better. Since all real advance has been through the leadership of exceptional men; and, since democracy itself and in spite of itself always resolves into leadership by a class or even by an individual, why not acknowledge this frankly and cease to hamper the expert by the delusion of mass rule? From this point of view it seems clear that as a representative democracy is better than direct democracy, granted that the representatives not merely follow the people's will, but lead it; so a limited expert oligarchy is still better, an unlimited expert oligarchy better still, and an unlimited expert monarchy or dictatorship the best of all.

For expert knowledge and wisdom belong to the very few; and among the few, there is sure to be the super-expert, who can direct even his fellow-experts better than they can direct themselves, while using their knowledge in ascertaining and guaranteeing the rights of every citizen of the State. If, as in Plato's ideal Republic, it is advisable for philosophers to be the rulers, how much more advisable if Plato himself, whose genius conceived such a State in the first place, and who understands it best, shall use, guide, and direct his fellow philosophers and be the supreme arbiter of all their disputes? Surely the wise and unselfish dictatorship of a Plato would ascertain and secure the rights of every Greek, high and low, rich and poor, much

more efficiently than would the ignorant and selfish dictation of the rabble! For Plato, plentifully endowed with the power of logical and sustained thinking founded upon knowledge, would be aware, more than any Greek, of what is the moral goal of man, and would be eager to ensure man's right to attain it. He who, in the *Meno*, elicited by dialectical skill from an ignorant slave a famous theorem of geometry, would know what it meant to recognize men as rational, and would surely be slow to say that any man's ultimate capacities are measurable. He who, in the *Crito*, makes his beloved Socrates refuse to escape from imprisonment and even makes him a glorious martyr to his fidelity to the State, would never refuse to recognize men as responsibly social. And once these Rights of Recognition were expertly assayed, announced, and assured as the very spirit of the State, certainly Plato would know how to gather specialists about him, whose counsel would make it possible for him to ascertain and to guarantee the conditions for self-realization. Crowd psychology, instead of being a menace, as in democracy, would become a most useful tool for the crowd's own welfare; and their apathy in political affairs would be a positive blessing. By Plato's keen insight, the exceptional man, like himself, would be singled out and encouraged. By his adroitness, the professional politician would be outwitted and put out of business. There would



be no party system to degenerate legislatures, corrupt administration, and be the tool of the moneyed interests; and, of course, Plato, idealist extraordinary, would never let his policies be determined by merely economic control. The inefficiency of popular rule, its unwitting extravagance, its helplessness in emergencies, all would be superseded by prompt and consistent action in terms of a wise and consistently developed policy, unaffected by the unpredictable whims of the multitude. And if the people still wanted the feeling of democracy, they could still have it as they have it now, namely, as a pleasing delusion, in so far as it is safe to allow them the delusion of power, robbed of the evils of its inane reality. Is it any wonder that recent history seems to be verifying the egregious failure of democracy and its gradual abandonment for better forms of the State?

There are a considerable number of writers who hold that the trend of events now runs against democracy. They point out that the transformations of the World War created new autocracies as well as new democracies; although hereditary rule of the old sort has disappeared—save in unimportant or remote countries such as Lichtenstein, Afghanistan, or Abyssinia—virile autocracies of another sort have sprung up in Italy, Hungary, Poland, Russia, and other states of Europe, and also, somewhat later, in Asiatic and Latin-American countries. The dictatorships, it is contended, show their powers of survival; for they are meeting unusual difficulties with a vigor, initiative, concentra-

tion of effort, and persistence of polity that were displayed by none of the constitutional monarchies or democracies they supplanted and that few of the existing democracies are able to maintain.<sup>23</sup>

The case against democracy seems complete. Democracy is not only undesirable; but substitutes are vindicated not only by plain logic but by the actual trend of civilization.

## CHAPTER IX

### THE CASE FOR DEMOCRACY

**A**LTHOUGH the case against democracy seems conclusive; although popular government, upon fair analysis, appears incapable of guaranteeing human rights intelligently and efficiently, or even of appreciating what these rights are, we find ourselves facing this strange paradox: Democracy is but a poor guarantee of human rights: yet, democracy is the one form of the political State absolutely involved in and demanded by the very nature of these same rights.

The first half of this paradox already seems quite clear and convincing: the other half will now be made quite as clear and, I think, quite as convincing.

Our question, then, becomes: Just how do the rights we have adduced necessarily involve the right to share in the determining of their guarantees, the right to political democracy?

#### I

The obligation and right to share in the means was deduced from the obligation and right to the

end. The right to ascertain the means was shown to follow as an essential part of the means themselves. And now, the right to determine the *guarantees* of the means rests upon precisely the same ground: it, too, becomes an indispensable part of the means to self-realization. All the arguments which supported the right to ascertain the means and to share in them may now be marshaled to support the right to guarantee them.

For the end which the means serve is rational, social, and indefinite self-realization. Well, how more efficiently and surely shall a man be induced to become increasingly rational than through the constant exercise of his reason in matters whose issue is his very life, physical and moral? Further, how shall a man more certainly achieve social vision than by his responsible coöperation in determining the guarantees by which he secures the rights of himself and his fellowmen? John Stuart Mill calls attention to "the moral part of the instruction afforded by the participation of the private citizen, even if rarely, in public functions. He is called upon, while so engaged, to weigh interests not his own; to be guided, in case of conflicting claims, by another rule than his private partialities; to apply, at every turn, principles and maxims which have for their reason of existence the common good. . . ." <sup>1</sup> Still further, how shall a man more truly discover his unmeasured powers

than by the necessity of creating and adjusting to them the political guarantees which secure their free release? And, finally, how shall a man become more alertly conscious of the end itself, his supreme right, for which all his other rights exist, than by being crucially responsible for the security of the ways of reaching it?

Indeed, if a god were deliberately inventing a way by which men would most quickly and surely engage their indeterminable powers in the interest of their rational and social development, *what better invention could he present men than responsible political deliberation and decision?* Suppose he, this god, stopped short of this. Suppose he said: "You citizens of the State have, indeed, the obligation and right endlessly to seek the Good, which, as you will find, is a rational and social Good; you also have the obligation and right, within the limits of your abilities, to ascertain and to share in the means to such growth as your times afford; *but* you have no right at all to ensure this right. You have all sorts of economic obligations and rights, cultural obligations and rights, the obligation and right to think and to utter your thought for the sake of yourselves and others; *but* you have no obligation, no right, to see that any of these rights are guaranteed by the political State. If guaranteed at all, they shall be guaranteed by some man or group of men who shall decide for

you just what political security they deem best for you—what laws you shall live under, what shall be the penalties of their violation, how they shall be administered and executed.” Then, indeed, this god will have contradicted himself (which, of course, he might freely do, being a mere god): for, in the same breath in which he granted men the right to share in the means to the high heaven of their goal, he would be depriving them of one of the most efficient means of attaining it!

The right, then, to determine the guarantees of rights—the right to democracy—is a reasonable corollary of the right to share in the means.

But the right to ascertain the means (likewise already established) taken entirely by itself seems also to carry with it the right to determine their guarantees. Surely it must have seemed arbitrary to separate, as we have so far done, the two obligations and rights. If the reader has felt this, all the better: it enforces our point. For, first, it seems reasonable to suppose that those who have the right to ascertain the means to their self-realization are also those best able to select such as need political security, as well as to prescribe the manner in which this security shall be established. One of the most frequent as well as one of the most convincing defenses of democracy is that it limits government from interference with the individual and his rights of self-development. Who, but the indi-

vidual himself, can best guard against such interference? Who, better than he, can ensure his own rightful liberties? Second, if the average man has the right and responsibility to ascertain the *means* of his self-realization, there is nothing which would stimulate him more adequately to discharge this important function than the responsibility of institutionalizing them in actual law and its sanctions, under which he himself is to be bound by himself as a willing subject.

From a purely logical standpoint, another consideration assuring the right to democracy emerges when we recall that any right, if vindicated at all, is based, directly or indirectly, upon an unmistakable moral obligation. Thus, as we have pointed out, the word "obligation" may be substituted for every "right" listed in our classification of rights, whether it is directly based upon an obligation or is implied in a right which is so based. The right to guarantees was shown to be an essential part of the right to share in the means. Therefore, if this latter right is itself an obligation, as has been demonstrated, so is this former right which it implies.

Now, what can our *obligation* to have guarantees possibly signify if not the obligation to *see* that we have them—responsibly to see that they are determined? And what can this mean, in turn, other than *the obligation to share in their determination?*

But exactly this is the right to democracy. The supreme liberty for any man is the liberty to share in the determination of his liberties.

Looking, thus, upon participation in government as an essential part of the means to self-realization, and so as an undeniable moral obligation and right, the autocratic rule of a class, however wise, unselfish, and benign, even the dictatorship of a Plato, no matter how "efficient," breaks down. It breaks down because it summarily deprives men of one of the most notable ways in which real efficiency, that is, responsible moral efficiency, is achieved. Indeed, a "perfect" autocracy is the most arrant of contradictions since, by its very nature, it ruthlessly destroys one of the chief functions of any government ethically justified: the education of men through their exercise of responsible power.

For, the fatal defect of any autocracy, even if "perfect," is that it must coerce men through forces utterly irrelevant to their own inner convictions. Such a form of government might (by hypothesis) be efficient in regulating men's outer acts; it might make men behave; it might even reduce them to such pleasant docility that they would at last possess the dear delusion of happiness. Crime might cease, poverty be abolished, and there might not be found through the length of this lucky State a discontented man, woman, or



child. But, achieving all this apparent moral perfection, this same autocracy would have annihilated the very heart of the moral life of its citizens: the responsibility of making certain crucial moral choices and decisions by which, alone, a man grows in moral knowledge and stature. For no man can be made good by mere coercion from without. In such a régime, he can only be made to conform his life to a pattern set up for him, a pattern which it is no business of his to evaluate or even to understand. This may be quite excellent for a child, up to the time when he is not old enough to think for himself; it is simply arrested development in a man. A perfect autocracy would be a society of well-behaved children, with no moral responsibility except to do as they were told, on fear of punishment. But a democracy, however imperfect, is a society of adults, capable of growing in moral insight through the responsibility of making crucial moral decisions for themselves—yes, growing in this moral knowledge, or faced with destruction through their own folly; engaged in a moral adventure of their own choosing, whose objective defines itself more fully with every struggle toward it; an adventure because its incentives come from inside a man, not from without, and require valor; an adventure because of the absolute certainty that grievous errors will be made—errors, however, which are redeemed by the fact that the

men who made them are aware that they are their own errors from which they must learn or surely perish.

The moral impossibility of autocracy is matched by a relevant impossibility resident in the nature of human psychology. Not only cannot a man be made good from without; one cannot even be assured that he will long conform his outer actions to laws and policies prescribed by the State if he is convinced that they are morally wrong. We have been entertaining the hypothesis of a kingdom of children, who shall perpetually remain children. But men are not children: they actually think and arrive at conclusions, however erroneous they may be. Even outer obedience to law is never secure unless inner conviction sanctions it. Or, as the common phrase goes, a law is futile unless public opinion is behind it. Thus, psychologically, and in the last resort, public opinion makes and unmakes law, directly or indirectly. In the long run, no matter what the nominal form of the political State, government must conform to the popular will. Deeply seen, autocracy is impossible because the seeds of democracy are inevitably there: psychologically, autocracy is impossible because democracy is necessary. Coker, reviewing the defenses of democracy, mentions that "participation in political power is indispensable for developing... the interest in government, respect

for law, and coöperative feeling which are in some measure essential to stable government in any community too enlightened and virile to be controlled mainly by fear of coercion." 2

The right to determine the guarantees of rights, or, the right to democracy, is established. This right has been shown to follow as a part of the right to share in the means and as a corollary of the right to ascertain the means; it has been shown to follow from the fact that the right to *have* guarantees involves the *obligation* to have them; from the fact that not only can no man be made "good" from *without*, but that to attempt to regulate his acts from without robs him of the chief means of moral growth; and, finally, democracy follows from the psychological impossibility of securing even an outer obedience to law without the inner processes of conviction. Therefore, to our tentative classification of rights we now add the right to democracy. In broad outline, the complete and final classification of rights takes the following form:

### CLASSIFICATION OF RIGHTS

#### I. THE RIGHT TO THE END (*synonymous with the Right to Life as self-realization, and involving*):

##### *The Rights of Recognition*

- (1) Persons are Rational
- (2) Persons are Social
- (3) Persons are Measureless

- II. THE RIGHT TO THE MEANS (*reciprocally conditioned by the capacities of each*)
1. *The Right to Ascertain the Means* (Rights of Thought, Press, Assembly, etc., so far in a non-political sense)
  2. *The Right to Share in the Means* (Economic Rights, Cultural Rights, etc.)
- III. THE RIGHT TO GUARANTEES OF RIGHTS (*through sanctions of society, including those of the political State*)
1. *Guarantees of the Right to the End*
  2. *Guarantees of the Right to the Means*
    - (1) Guarantees of the Right to Ascertain the Means
    - (2) Guarantees of the Right to Share in the Means
- IV. THE RIGHT TO DETERMINE THE GUARANTEES OF RIGHTS, OR, THE RIGHT TO DEMOCRACY

## II

But, alas, granted that the right to democracy is proved to follow logically from the very nature of human rights, and thus from the obligations upon which they are founded, what of it? Such a demonstration, even if cogent, seems wholly empty and futile, a mere exhibition of academic dialectics, with no practical significance. For we have already adduced convincing reasons toward proving the practical impossibility of democracy because of the abject incompetence of the average man even to ascertain, let alone to make secure,

his own rights. Our initial paradox now returns upon us:

Democracy is the one form of the political State deducible from human rights: yet, democracy is not able efficiently to perform its function, which is to guarantee these same rights. Or, to state the paradox in another form: We have the right to share in the determination of the guarantees of our rights: yet, because of our incompetence, our exercise of this right would destroy the very guarantees we seek to determine.

How shall we solve this apparent contradiction?

Well, already our paradox is not nearly so formidable as it at first appeared, since our arguments have made it clear that the relative inefficiency of democracy is redeemed by its ethical advantages—crucial advantages which no other form of government can offer, and yet which are an essential part of the final justification of any government whatever. What seems to be efficiency in non-democratic government turns out to be an efficiency which violates the very moral order with its rights which it should defend and further. Thus, an imperfect democracy has been shown to be better than even a “perfect” autocracy.

That at least such an imperfect democracy is possible surely no one disputes. The arguments denying the possibility of any democracy at all are always directed against some certain specific form

of democracy, or a democracy approximating some definitely selected degree of perfection.

Thus, multiply your criticisms of democracy as you choose; emphasize its quite obvious defects as you will; show, as you no doubt can, that almost any other form of the political State is likely to be economically more efficient, less wasteful, less extravagant, its laws and policies more rationally coherent and more wisely administered, its statesmen more adroit, its government swifter in emergencies, its arts and sciences more encouraged and advanced, its exceptional men better recognized and acclaimed, its experts given a surer chance to take their proper place in civilization—achieve all this by the logic of whatever facts you can marshal, and your argument is still pitifully beside the real point at issue. For, relatively “perfect” as your non-democratic State may be, it does not, it cannot, in the very nature of the case, perform the central function of government, so far as it is ethically justified—that is, create the essential conditions (already named) by which every man shall discover his own capacities and powers and, by his own volition, develop them toward his own increasingly rational and social self-realization.

Our paradox is still more mitigated when we carefully rescrutinize the case against democracy and evaluate some of the criticisms offered against it. Imperfect as democracy certainly is, it is not

quite so evil as some of its opponents try to make out. In the first few pages of this book we pointed out that one notable difficulty with the critics of democracy is that, while they all refer to the one word, "democracy," they mean quite different things by it; so that it is difficult to assay their criticisms singly or to make a fair estimate of their comparative worth. In considering any adverse criticism of democracy, we must constantly keep in mind exactly what we are talking about, namely, a political institution known as government by the people, which includes all the quite various forms that this very general concept may take in the world of practical fact. And thus attentive to this one object of reference, we must exclude all criticisms which are irrelevant and, therefore, inconclusive.

Such inconclusive criticisms divide themselves into three classes: (1) those that condemn democracy as it is or as it is likely to be because it falls short of perfection; (2) those that apply equally well to *any* form of government; (3) those that seem peculiar to democracy in view of its pretensions and apply to actual democracies, indeed, but are clearly remediable to a degree that makes democracy possible, and in view of its advantages, desirable.

I shall now proceed to review the case against democracy and show that a number of the more

significant arguments place themselves within one or more of these three inconclusive classes.

First: While any human institution must, indeed, be evaluated from the standpoint of the ideal that it seeks to realize, it is never invalidated by the mere fact that it has not yet achieved this ideal, or even by the fact that it will never attain it in any moment of finite time. Otherwise, every human institution would be condemned because it must ever fall short of perfection. One does not say that a man is not good because he is not perfect: if he were perfect, he would no longer be a man, but God. No ideal legislates the imperfect out of existence: it only serves as a necessary standard or norm by which progress is judged. Thus, it is just as unfair to compare a perfect autocracy with an imperfect democracy as it would be to compare a perfect democracy with an imperfect autocracy: actual perfection in the case of each is impossible. One must not answer the necessary imperfection of democracy with the hypothetical and wholly impossible perfection of some other form of the State. To be just, we are obliged to compare democracy as we can get it with any other form of government as we are likely to get it.

And what kind of autocracy are we likely to get, if we are to judge by experience and our knowledge of human nature? Not the dictatorship of a Plato,



such as we have pleasantly pictured. Your autocratic individual or class can be and most often is as selfish and as unscrupulous as democracy's most hardened politician, and with none of the overt checks to ambition that democracy's politician must have the craft to mollify. If democracy tends to reduce all men to a dead level of mediocrity, what about your autocrat, who, in order to maintain his power, must jealously see that men are made amenable utilities of the State, their initiative stifled, their abilities regimented and even discouraged lest they become too hostile, their education become a strict discipline for the accomplishment of his personal designs; science and the arts made subservient and distorted to support the logic of his rule. The exceptional man? He is a danger, a possible rival. He may be submerged as democracy never submerges him. Crowd psychology? Who knows better than your skilled autocrat how to influence it, shape it, weld it into a unified hysteria of patriotism and sway it even to the frenzy of war for his own private glory; while democracy's crowd psychology is likely to be plural and factional, subject to the appeals of not one but of many leaders, chastened by reciprocal jealousies and jousts, speedily corrective of its own excesses. And even supposing that your autocrat is a Plato, or his admirable aristocracy of kingly philosophers, even Plato is mortal and philoso-

phers must die, to be replaced—by whom? Another wise and benevolent autocracy? Who knows? It may be a Mussolini, it may be a Hitler. But, whoever it is, what guarantee is there that human rights, even if so far respected, will remain secure? Yet this is a matter far more important than any temporary efficiency. Granted that democracy can secure human rights at all, it is more likely to perpetuate them, since its changes in law and policy are more conservative, less sudden, less arbitrary if in the hands of those whose rights are threatened than if within the power of a single person or class, irresponsible to the people. And what is true of autocracy is true of any other non-democratic form of the State—a limited monarchy, for instance, in so far as we are dealing, in any case, with highly imperfect human institutions, certain to be precisely as imperfect after their kind as democracy is certain to be imperfect after its kind. Now and always, both democratic and non-democratic States must of necessity be highly defective. Instead of challenging the imperfections of the one with the supposed perfections of the other, our problem is, rather: Can a democratic State, imperfect as it likely to be, perform the central business of a State better than one that is non-democratic—this business being understood to be the effectual guaranteeing of the rights of man?

## III

Our second inconclusive class of criticisms comprises those that apply not to democracy alone, but to any form of government. Unavoidably, we have anticipated some of this type of criticism in illustrating some of the probable evils of autocracy—evils which are quite probable also in other forms of the non-democratic State, if not in so intense a degree. But, reverting to our case against democracy, we shall find the following specific criticisms applicable not only to democracy, but to any form of the political State as we have had it and as we are likely to have it: (1) The influence of the professional politician for his own interests; (2) The influence of a moneyed class.

No less able an analyst than Bryce points out that these two defects "have been observed in all governments," and he adds that a third criticism of democracy, extravagance in administration, has also been found in all other forms of the political State.<sup>3</sup> Certainly, professional politicians have been with us ever since the first government was born, and no doubt they will be with us as long as government survives. As for the power of money to direct legislation and administration, it has always been so conspicuous a phenomenon that it has been used as one of the most convincing arguments sup-

porting an economic interpretation of history. By no means is it peculiar to democracy. "Following Ostrogorski, Sumner, Weyl, Croly, Nearing, Lippmann, Follett, Godkin, Sims, F. C. Howe, and others see the danger to political society that lies in the domination of great economic groups to whom party machines are tools for personal gain. But that this is inherently associated with democratic principles as they define them, or that these same evils are peculiar to democratic régimes is not conceded by them." <sup>4</sup>

But the point may well be raised that while these faults may be common to all governments, they are found in democracy to a greater degree, or are more inimical to the democratic form of the State than to any other. The weight of evidence is actually in the contrary direction. The professional politician has to answer to the people in a democracy as he does in no other form of the State. He rises through their suffrage, keeps his power by it, and is dismissed by it. No matter how, through his craft, he may use the masses for his own private purposes, he cannot go so far as to nullify their will, or nullify it so long as he might in a form of the State irresponsible to that will. Further, in a democracy, those who make politics a trade are many, and the result is that they are competing with each other to obtain constituents and to retain their approbation. In a democracy,

the politicians modify each other in terms of a will that controls them all. This means constant and competitive discussion of public issues, eliciting popular decisions which the politicians are bound to respect. However ineffective a check the people have, it is a check much more positive and efficient than in States where there is no such check; and it may become just as efficient as the people want to make it. Even though it be unenlightened, the politician is ever face to face with it and cannot defy it.

That the control by moneyed interests in a democracy is likely to be more arrogant or pernicious than in other forms of government is at clear variance with both the logic of democracy and actual history. An interest so fundamental to human welfare as the economic must ever be of vital and active concern to any people with the weapon of the franchise, especially when their interests are seriously threatened. So far as their economic welfare can be regulated by government at all, they have a recourse in the ballot, speedy and sure, as compared with that of the people of a non-democratic State, which have only the appeal to rebellion, hard to organize, hazardous to exercise, and difficult, if not impossible to retract, if mistaken. The economic adjustments of a democracy need to be particularly fair and their orderly redress through various institutional sanctions and,

in the last resort, through the peaceful means of the ballot, obvious and facile, or democracy too, will tend to resort to violence, exercised either by the masses, or, more commonly, by the individual, in those sporadic rebellions against the existing régime which take the form of crimes against property and, still worse, against the person. It may well be that the prevalence of such crimes in a democracy is not merely an expression of lawlessness, impugning the efficiency of the democratic State, but a symptom of serious economic maladjustment, which, in a democracy, becomes especially poignant, since its citizens are uniquely sensitive to encroachments upon their personal rights, particularly in terms of their traditional slogans of equality and freedom. But this resort to violence is essentially contrary to the genius of a democratic State, and an enlightened democracy can and will utilize its characteristic means of economic reform: organized social sanctions, and, so far as governmental guarantees are necessary, the franchise. "Hobson sees modern social problems intimately associated with the domination of an economic oligarchy, and this oligarchy can be combated only by popular control of the government." <sup>5</sup>

Thus, the influence of the professional politician and of money are criticisms belonging to not only all other governments as well as to democracy, but belonging to them in equal if not greater de-

gree. It is irrelevant, therefore, to direct these criticisms exclusively against democracy, as if it alone suffered from these defects and were, therefore, to be summarily rejected. Any other form of the State could be rejected on the same terms.

## IV

The third inconclusive class of criticisms embraces those that seem peculiar to democracy, in view of its pretensions, and that apply, indeed, to democracies as we actually have them, but are clearly remediable to a degree that makes democracy desirable, considering its unique and counterbalancing advantages. Under this class of irrelevancies fall the most numerous of the arguments which support the case against democracy.

The chief arguments of this class are the following: The average man has not even a knowledge of the end for which his democracy is the means, and has but a vague notion of that underlying evaluation of men which reveals and supports this knowledge, and is the genius of the spirit of democracy—the recognition of himself and of his fellows as essentially social, rational, and measureless in capacities. Even if he did not fail here, he is incompetent either to ascertain or politically to guarantee the means to his self-realization. He is incompetent even to select experts who will per-

form this function for him. He is apathetic in the exercise of his franchise, so that, even if he were competent, democracy becomes futile. Further, democracy tends to discourage the exceptional man, and yet the exceptional man is necessary to its success. Finally, the party system woefully defeats democracy's true function and purpose.

Now, there is no doubt whatever that all these defects belong, in varying degrees, to actual democracies and always will. In other words, democracy will ever be imperfect, as, indeed, any other form of the State will always be imperfect. The real question is: Are these defects necessarily of such a degree as to defeat democracy? That is, are they, in a disastrous degree, so much an integral part of the very nature of democracy that they cannot be remedied, or are not likely to be remedied?

My general answer is that an actual democracy may truly suffer from these defects to such a degree that it is but a sorry thing, or, even made practically futile by them; but that, within the possibilities of average human nature, at least as we find it in the civilized countries of the occident, imperfect as such human nature is, these defects may not only be remedied, but democracy actually contains within itself the virile and efficient means of its own progressive correction.

The knowledge of the end, for which all other



rights are the means, while not an essential prerequisite for the citizen of a non-democratic State, is, in some measure, indispensable for democracy's citizen, since he has the responsibility of ascertaining and of guaranteeing the means to that end. Thus, a lack of such knowledge clearly becomes a radical defect peculiar to democracy, in view of its pretensions.

Does this defect belong to the average man to such a degree that it is fatal to democracy?

Well, of course, the average man is possessed of no articulate ethical theory, no such envisaging of the moral order as he is able to express in technical terms. He is not a professor of ethics, with a ready definition of all possible goals and a rational defense of the goal he adopts. But that he is unaware of such a goal, and in a degree that makes him helpless, is quite another matter. This awareness of what he fundamentally wants out of life and insists upon having is usually shown quite indirectly—in negative rather than in positive ways; and, as I have insisted, it comes to the surface whenever what we have called the Rights of Recognition are flagrantly assailed. Thus, if any man or a class of men is hardy enough to tell him "where he gets off"—that he shall go thus far and no farther; that he is finally and for all time assayed, classified, pigeon-holed with regard to his possibilities, he rebels in no uncertain terms. In this he is,

however negatively, insisting upon one essential aspect of the end he seeks: it shall not be measured *for* him, but *by* him, in terms of his own trial and error. Negatively, too, he insists that he possesses the resources of reason within himself. No one shall coerce his opinion, inexperienced as his opinion may be. Capable of mistakes as he knows himself to be, he must be convinced. He believes in his fundamental rationality. And, further, he will not be "left out." He is social. He will not long consent to be made a mere utility of the purposes of his fellows, not even of his friends. He regards himself as an integral part of any "social welfare." He shares. All of which means that, practically, even if not theoretically, negatively, even if not positively, he is aware that he seeks a fairly definite end: the very end we have defined as the obligation of all obligations, the right of all rights—rational, social, and measureless self-realization.

And, however dim this awareness may be, and it is dim enough, democracy contains within itself the means of making this awareness ever clearer: for democracy gives to her citizens the responsibility of ascertaining and of guaranteeing the instrumentalities by which the end is to be attained. Mistakes mean defeat: and each defeat means redefinition of the objective, through the misunderstanding of which such defeats are most likely to occur.

Thus, not only is it untrue that the average man has no working knowledge of what he seeks; but as a matter of his moral self-preservation democracy inevitably and surely urges him on to the knowledge that he lacks.

## V

But even granting that the average man has a minimum knowledge of his moral objective, however theoretically vague, it is of little avail to him if, as constantly alleged, he is grossly incompetent either to ascertain or politically to guarantee the necessary means to attain it. And that, in our present stage of highly complex civilization, he is thus grossly incompetent must be admitted. *So, for that matter, is any given expert.* For, to-day the more any one becomes an expert, the more, perforce, he becomes a specialist, and his field of knowledge narrows. And this progressive narrowing of the specialist's field increases as human knowledge extends itself. A scientist who is an expert on sanitary conditions, or on the sort of legislation necessary to secure them, would be but a sorry authority on the intricacies of taxation, compared with an economist in that difficult field. If your average man is incompetent because he is *not* an expert, your expert, who is always a specialist, is also incompetent precisely because he *is* an expert

—that is, without the coöperation of his fellow experts.

This fact may seem too obvious to mention; but, as we soon shall see, it becomes exceedingly important to any argument for or against democracy. And facing this obvious fact, we surely must admit that experts, coöperating with each other, form the class of men logically to be entrusted with both ascertaining the means of human progress and securing them by law, wisely administered and executed.

But this guidance by experts, conceded as the very best sort of guidance, does not at all dispense with democracy within its political definition. The real question still remains: Shall your experts be responsible only to themselves, or shall they be responsible to their fellow men whose rights they serve? For, within our hypothesis, it is solely because they are competent to serve every man's rights more efficiently than he himself that experts are to be put in power in the first place. And by responsibility of experts I mean not merely moral responsibility, but actual and real accountability of such a practical sort that the people can, in the last resort, guide or reject their policies and even displace those who made them by the use of the franchise. Such accountability would, surely, mean government by the popular will, or government by democracy.

Keeping within the one issue of competence, the answer depends upon two subsidiary questions: (1) Would such popular control add to the wisdom of the expert? (2) Is such popular control itself any essential part of the realization of those rights which the experts exist to further?

To both these questions the answer is in the affirmative.

First, such popular control indubitably adds to the wisdom of the expert something which is essential to him and which the expert himself cannot by himself supply. To put it paradoxically, the average man, take him in the mass, is himself a sort of expert, a specialist in one thing which the narrow expert is, through his very specialization, appreciably incompetent to understand—the broad human interests of the people at large, that all expertness must serve or be futile. Specialization, if it be mere specialization without a synthetic outlook or purpose which makes every specialization a utility to the realization of this purpose, conspicuously defeats itself.

Now a given specialist may or may not have this particular sort of competence. Usually, he does not. In spite of his psychological arraignment of democracy, Le Bon thinks that "It does not follow that because an individual knows Greek or mathematics, is an architect, a veterinary surgeon, a doctor, a barrister, he is endowed with a special

intelligence on social questions.”<sup>6</sup> And even if the specialist has this competence, he needs the average man’s check upon it to be sure of himself. That the people at large are better competent than the specialist to assay and to protect the larger ends which he exists to serve is attested by competent observers. For instance, Matthew Arnold is convinced that “If experience has established any one thing in this world, it has established this: that it is well for any great class or description of men in society to be able to say for itself what it wants, and not to have other classes, the so-called educated and intelligent classes, acting for it as its proctors, and supposed to understand its wants and to provide for them. They do not really understand its wants, they do not really provide for them. A class of men may often itself not either fully understand its own wants or adequately express them; but it has a nearer interest and a more sure diligence in the matter than any of its proctors, and therefore a better chance of success.”<sup>7</sup> Mecklin contends that “the specialization of work and the concentration of energies in the case of the markedly successful business man, lawyer, physician, or scientist, inevitably induce a narrowing of interests. The price paid for success in a chosen profession is too often an institutionalizing of thought and feeling. . . . The unsophisticated sanity of the average man, therefore, gives to his utter-

ances upon moral questions a validity not possessed by the opinion of the scholar or the pronouncements of the successful business man hopelessly committed to group interests. . . . The springs of moral action are ever in intimate association with the homely but sane and powerful sentiments that find expression in the marriage tie, love of offspring, normal and healthful occupations, and community interests. . . . In the mad pursuit of economic gains, social preferment, or the tawdry pleasures of our highly artificial city life, the sober, persistent human values are often utterly lost from view. Doubtless this explains why we find the unbiased moral judgment of our village and agricultural communities most trustworthy on great moral issues." <sup>8</sup> Bryce is certain that "Where the humbler classes have differed in opinion from the higher, they have often been proved by the event to have been right and their so-called betters wrong." <sup>9</sup> Coker, reviewing certain arguments for democracy, cites the democrat's opinion "that no minorities are ever so superior in wisdom and self-control that they do not constantly require both the enlightenment and the restraint which come from the necessity of persuading the minds and wills and maintaining the confidence and respect of the people whom they seek to lead. In short, the rank and file are generally able to make a relatively intelligent discrimination between a

group that intends to further the public interest and some other group, animated by narrower motives." <sup>10</sup>

## VI

All this at once suggests the specific limits within which popular control may be best exercised in the interests of the popular welfare. The average man may well be the jealous guardian of the larger ends for which exist the conditions for self-realization; the expert, on the other hand, may well be entrusted with devising the intricate details that make these conditions efficient. The people's business is to keep experts within the actual service of their rights. "Though the people cannot choose and guide the Means administration employs, they can prescribe the Ends: and so although government may not be By the People, it may be For the People. The people declare the End of government to be the welfare of the whole community and not of any specially favored section. They commit the Means for attaining that end to the citizens whom they select for that purpose. They watch those selected citizens to make sure that they do not misuse the authority entrusted to them." <sup>11</sup> If the people are deprived of this broad check, the guarantees of their rights are in imminent danger of being perverted to the exclusive and special interests of the few: which



means the ascendancy of an oligarchy, irresponsible, thoroughly autocratic.

Already considerations have been presented supporting the relative competence of the average man to envisage the general end, in terms of which any government of experts must find its justification. But is the average man competent to *guard* this right to his self-realization, through public opinion, social groups, and, finally, through the ballot?

Most of those who impugn the competence of average men in this respect seem to think of them as discrete and separate individuals, as merely so many unrelated political atoms, whose convictions are no more enlightened than their several isolated ignorances. But the average man's decision is not a lonely decision reached by fasting and prayer in a wilderness; it is the complex product of a number of social factors. He inherits, in the guise of sentimental loyalties, the cumulative experience of his kind in their long search for that moral goal which is also his own. This wisdom registers itself not so much in what he can put into logical formulas for a meeting of philosophers as in his less articulate sentiments and loyalties. His reasoning is not merely a matter of abstract intellect: he feels as well as thinks his way to what often turn out to be quite rational decisions. Further, in a democracy, it is not the average man's opinion

as over against that of the expert: for the latter, too, is a fellow-citizen, from whom the masses demand responsible enlightenment in matters beyond their ken; and the people's opinions are molded in terms of this public information, constantly and increasingly available through newspapers, magazines, books, and public discussions of all sorts now made quickly and universally current by new means of communication such as the movie and the radio, powerful servants of democracy not anticipated by many of its classic critics. And the average man not only reads and hears discussions by experts (who often differ among themselves), but his verdict is the product of further discussions of millions of other average men with themselves and with experts—average men with many grades of intelligence and varieties of experience, getting together in countless groups, more or less organized, and existing for just this purpose. Thus, as Giddings wisely observes, a decision of the ignorant is not necessarily an ignorant decision.<sup>12</sup> Thus, public opinion becomes not merely "the average of individual opinions, but something more."<sup>13</sup> Perry observes that, "Contrary to a theory that philosophers have done much to support, democracy is not a method of confounding intelligence with the clamor of many voices, but a method of correcting the single intelligence by the report of whatever other intelligence may be most advan-

tageously related to the matter at issue. . . . Accidents of locality cancel one another." <sup>14</sup>

It has sometimes been proposed that, ideally, votes should be given weight according to the intelligence of the voter. Why should a college professor's ballot count no more than that of, say, a ditch-digger's? Leaving out the question of how one would go about to measure intelligence in terms of the quantity of ballots to which it is entitled, one must not overlook the fact that, "A man when he comes to vote does not put off from him, like a suit of old clothes, his character, his wealth, his social influence, his devotion to political interests, and become a naked unit. He carries with him in his voting all the influence that he should have, and if he deserves twice as much as another man, it is safe to say that he decides twice as many votes as that other man." <sup>15</sup>

If public opinion, issuing in the ballot, is, thus, more or less the product of social deliberation under the leadership of the enlightened, the arraignment of the decisions of the average man on the assumption that they are sheer expressions of his private ignorance is absurd; and, for the same reasons, the accusation that his verdicts are but reflex expressions of primitive impulses characterizing "crowd psychology" is just as absurd. People do not vote as mobs. They do not deliver their decisions in terms of mere momentary emo-

tional stimuli, unconsidered, undeliberated, as does a mob when it lynches a Negro. Defective as is democracy, it is not a mobocracy. And, as has been indicated, crowd psychology, so far as it exists politically, can be more dangerously fomented and utilized in an autocracy than in a democracy: a dictator, absolutely controlling and guiding all the press, all speech, all education to his purposes, may weld a people into a unified mob as a democracy never can. For, dangerous as any demagogue is, the many demagogues of democracy are safer than the one of a dictatorship; and the crowd psychology to which they appeal tends to express itself in rival groups which curb each other and thus give democracy a chance for second thought.

We must not lose sight of the special question under discussion, namely: Granted that experts are best qualified to ascertain and secure the means to self-realization, shall they be made responsible to the people whose rights they serve? Shall we have our experts act under a democratic or a non-democratic form of government? An attempt has just been made to show that popular control would add something absolutely essential to the wisdom of the expert, if human rights are to be intelligently served by them. But this is not all, nor even most important: popular control of the expert, if denied, deprives men of one of the essential means to their own self-development, their own progress, and

thus renders futile whatever the expert may accomplish, however "efficient" he may be.

We do not need to review the arguments adduced at the beginning of this chapter to prove this. But we do need to remind ourselves that however relevant an argument against democracy may be, it is not in the least conclusive if it ignores the unique values belonging to democracy, especially this particular indispensable value of growth through responsible decision—a value which no other form of government offers. Once our theory of rights is granted, this value of itself counterbalances most of the alleged defects of popular government and, as we have maintained, tends to make any democracy, however imperfect, preferable to any autocracy, however perfect.

## VII

It is not impossible, then, to conciliate government by experts with government by the average man, and still retain the essential meaning of the democratic concept as generally understood by political scientists. This conciliation furnishes an answer to the objection that democracy is impossible because all government is necessarily by the few. For democracy can still be democracy and make room for its experts, and, by so doing, will be all the more a democracy because a wiser de-

mocracy—a democracy better securing the rights for which democracy exists.

There is no doubt that this is now the prevailing view of the more critical defenders of democracy everywhere. "Thus moderate democratic and moderate aristocratic doctrines are not far apart to-day. Just as the latter does not challenge the former's ideal of equality of opportunity and of assignment of political function according to merit rather than social position, so the former does not challenge the latter's ideal of government by those fitted to govern."<sup>16</sup> Bryce insists that "Free Government cannot but be, and has in reality always been, an Oligarchy within a Democracy. But it is Oligarchy not in the historical sense of the Rule of a Class, but rather in the original sense of the word, the rule of Few instead of Many individuals, to wit, those few whom neither birth nor wealth nor race distinguishes from the rest, but only Nature in having given them qualities or opportunities she has denied to others."<sup>17</sup> With such a view of a democracy-aristocracy the writings of Giddings, Conklin, Cooley, Goddard and many others are in substantial accord.<sup>18</sup>

But admitted that a certain amount of power should be delegated to a class of experts, is there not imminent danger that this class, initially responsible to the people, shall become more and more irresponsible to them, increasingly indiffer-

ent to their interests, gradually marshaling, by their own superior cleverness, the means of civilization to their own exclusive purposes? Is there not danger that democracy, with rule delegated to experts, shall gradually become a pure aristocracy, with only enough left of democracy to delude the rabble?

Such a contingency becomes far less probable when we examine further the so-called "class" of experts. In the first place, in democracy as we know it, it is not a hereditary class: that is, it is far from being an aristocracy in the sense of being a self-enclosed caste. No, it is a large and highly shifting group, a group in a perpetual state of flux, its membership constantly recruited from the masses, which makes the "masses" themselves a highly shifting class, whose "average men" may not at all remain average men. Indeed, in a democracy, where popular education is, as a matter of self-defense, likely to be widely diffused, it would be extremely difficult to say just where the "class" of experts ends and the so-called common people begin. In other words, it is not a class at all in the sense of a class well defined and set over against the average man. Expertness, from highest to lowest, shades down so gradually that the expert group, as well as the mass group, becomes a rather nebulous phenomenon. For who comprise this expert class, first, directing our attention to its function

of ascertaining the means of progress, distinguished from the guaranteeing of them politically?

First of all, they include men and women devoting their lives to the pure sciences, such as physics, chemistry, biology; and in the social field to researches in such subjects as economics, politics, and sociology. They also include those engaged in the applied sciences, such as agriculture, engineering, medicine, or who contribute to civilization through the many specialized professions, such as law, education, religion, journalism, industry and business. Nor may there be left out those who dedicate their talents to the arts, such as painting, sculpture, architecture, music, and *belles lettres* in all its manifold forms: surely, such men and women contribute to essential means for social progress! And where shall we stop? Shall we leave out the skilled mechanic? Logically, we must, in the last resort, include among our expert "class" all men and women who, in however humble a way, inject into their jobs specialized thinking contributing to the common weal.

Directing our attention further to the expert "class" capable of determining the political guarantees of means already ascertained, the political experts *par excellence*, exactly the same considerations apply. In spite of the power they wield, even in terms of their selfish interests, political experts in democracies as we know them have never been



able to create a hereditary caste. Nor are they likely to, in the very nature of democracy. This group, too, is highly shifting; and, instead of being set over against the masses, is constantly recruited from them and its members periodically return to the masses, who, themselves, raised them to power, kept them in power, and denied them power at last. As indicated before, the professional politician is found in any form of government. But he is less likely to perpetuate himself in a democracy than in any other form of the State, since here and here only is present the unique resource of the ballot, which must be respected even by the expert politician as the sovereign power, and which, no matter how long-suffering, speaks at last the verdicts of the popular will.

True, your voter is apathetic: and this is a pity. But there are three things about this apathy, applying not only to the craft of the professional politician but to the party system through which he works: First, it is surely better for men to have the possibility of redress in protecting their rights, even if they do not use it, than to be rendered utterly powerless. Second, experience has shown that democracies do shake off their apathy and assert themselves, even to the dissolution of party loyalties, when men's rights are seriously and crucially threatened. Democratic progress, though not that ideal sort of advance which proceeds in a straight

line of rational improvement, dictated by eternal vigilance, nevertheless may move forward, in spite of periodic retrogressions, by periodic and emphatic assertions of the popular will. Third, democratic apathy is remediable through education, whether by the school of bitter experience or by the special tutelage of democracy's chief hope—its institutions of research and public instruction, which loosen blind adherence to mere party and develop that independent and courageous conviction which is the soul of democracy. Enlightenment about vital issues inevitably creates interest in them, and interest destroys apathy. So that we do not have to rely merely upon the psychological fact "that the gift of the suffrage creates the will to use it," but on the further fact "that the gift of knowledge creates the capacity to use the suffrage aright."<sup>19</sup> And as enlightenment proceeds, the voter is less and less content to vote only on issues manufactured by party bosses, but insists upon making issues of his own clamor for recognition.

### VIII

But, granted that democracy is still democracy even though its chief business with regard to ascertaining and guaranteeing the means is delegated to experts responsible to the people, we must meet the quite common objection that aver-

age men are incompetent even to *elect* experts to represent them—to put the right men into power for the efficient service and the true guaranteeing of their rights.

This objection applies, so far as it does apply, chiefly to experts in the various departments of government—to democracy's legislators, administrators and executives. For, so far as the efficient ascertaining of the means of progress is concerned, contrasted with the expert business of their governmental guarantees, your experts perform their function quite unchosen by the people, at least, in any direct manner. The men who develop the means of civilization—those devoted to the progress of the sciences, pure and applied, and the arts—are, for the most part, not set up in business by popular vote; although it is true that the attitude of the people shown, for instance, in their convictions about higher education, will be a most important factor in making an expert class possible. And, surely, some democracies as we actually find them, the American, for instance, unequivocally endorse such education and even tax themselves millions of money annually to maintain it and to increase its efficiency. Further, in America at least, the educational trend is clearly in the direction of that specialization which is indispensable to any expertness, evinced in the rapid growth of vocational and professional schools—nowhere more

marked than in the very institutions founded and supported by the State. The phenomenal increase in attendance at such schools where experts are trained is a commonplace; and statistics show indubitably that these trained experts are assuming the place of leadership in American life.<sup>20</sup> Indeed, I recently heard a distinguished and capable foreigner observe that a salient characteristic of the American people is their faith in experts to the point of blindness!

Thus, the competence of the average man to *elect* experts has little to do, directly, with the existence of such as have the peculiar function of ascertaining the means of self-realization.

Further, the matter of guaranteeing the means so far ascertained is, as already pointed out, only partially a business of government. Our rights, in their details, are largely protected by the sanctions of countless social organizations, making superfluous such expertness as appertains to governmental agencies. This relieves the voter still more of the responsibility of choosing experts in the merely political sense. Conspicuous instances of groups giving men non-political guarantees of their rights through the effective coercion within the group are: associations of teachers, lawyers, physicians, clergymen, farmers, laboring men, artists, not to speak of the powerful associations of industrialists and business men, and the multi-

ple forms of public welfare associations. Many of these groups protect not only the rights of their own members, but those of the general public, which their members serve. The government has the function, indeed, of guarding the rights of such groups in turn: but these groups give us a vast non-political democracy which directly and vitally fashions the ideals and policies of the over-organization known as the political State. In the democracy of his intimate group, the apathy of the average man is lessened, since his own special interests are directly involved, and the group is under his daily regard and influence. Here he insists upon efficiency, if nowhere else, as the precondition of securing his rights. And, the more the group itself becomes expert, the more is it likely, in self-defense, to demand expertness in that one group to which every man perforce belongs—the political State.

The State

is an association like others: churches, trade unions, and the rest. It differs from them in that membership is compulsory upon all that live within its territorial ambit, and that it can, in the last resort, enforce its obligations upon its subjects. But its moral character is no different from that of any other association. It exacts loyalty upon the same grim condition that a man exacts loyalty from his friends.... In the long run, it will win support, not by the theoretic programme it announces, but by the perception of ordinary citizens that allegiance to its will is a necessary condition of their own well-being.<sup>21</sup>

But, admitted that democracy's experts function for the welfare of the people quite largely outside the range of governmental agencies, the question still remains: Is it true that the average man lacks the ability to choose experts to represent him in government?

The question is difficult, and the answer is wholly relative to the stage of civilization a given democracy has reached. Of course, democracy is relatively impossible if the electorate falls below a certain degree of intelligence. I do not pretend to be able to define exactly what that certain degree of intelligence is. Being an American, I naturally have in mind the average man as I know him here in the United States in the twentieth century. And my conviction is that, inexpert as he may be in political wisdom of special sorts, he has a real sense of the common interests he is called upon to guard by his vote; that he has a fighting knowledge of the end he seeks; that he is conscious of a desire to put efficient persons into his government, although, as has been indicated, he is much too apathetic except when crucial issues arise. Cooley thinks that "The masses of the people do not contribute formulated ideas; their main contribution is that of sentiment and common sense, which is the momentum behind progress. Particulars are left to leaders, and this can be done with safety because *the masses are keen judges of per-*

sons. Operating in this way, democracy does not become a rule of incompetence as Lecky, Maine, Cram, and Faguet have declared.”<sup>22</sup>

Certainly, the average man is being given constantly increased opportunities to keep informed with regard to exactly what his public officials are doing; and increased knowledge may and probably will intensify the sense of obligation, especially as the level of the average man is raised through education.

But speculations with regard to whether democracy has the wisdom to place its affairs in the hands of experts are not so important if one can point to a concrete instance of democracy in which the rule of experts actually obtains. And I think that this can be shown in the instance of America, in the rather limited sense of proving that public offices are increasingly filled by men who have gone through a long process of education. Of the public officials newly listed in the last *Who's Who in America*, over four fifths have received college training.<sup>23</sup>

In the last resort, however, the question of whether the expert shall or shall not be accorded his proper place in democracy *depends upon the expert himself*. For if he is not expert enough to devise efficient ways by which the people shall grant him his true function, then his supposed expertness is, indeed, open to serious challenge! But

political experts have been and are at work on this question. All sorts of reforms in the mode of political representation have been suggested—enough to make it probable that the inability to select experts is not a defect essential to democracy as such, but only an incidental fault of democracy as we happen to have it.

At this point, we must resolutely face the formidable objection, voiced by many critics, that even if democracy be granted to have the sense to elect exceptional men, democracy makes these same exceptional men impossible since it tends to reduce all its citizens to a dead level of mediocrity—to discourage talent and genius—to construe equality to mean sameness, conformity to type.

This problem of democracy and the exceptional man leads us directly to the vexatious question of what democratic equality and its correlative freedom truly means, granted that democracy is consistent with the human rights from which it is deduced. The freedom that the exceptional man needs seems to be frustrated by the equality which the masses of men insist upon. Shall we be able to conciliate equality and freedom—the equality of all men with the freedom of the exceptional man, and this freedom, in turn, with the freedom of every man?

The critical consideration of equality and freedom will serve not only to answer the problem of



the exceptional man, but to explicate still further certain important phases of the nature of rights and of such a democracy as can be properly justified by them.

## CHAPTER X

### EQUALITY IN A TRUE DEMOCRACY

#### I

**T**HROUGHOUT the history of the struggle for rights, the most insistent rallying cries have been Equality and Freedom. Of a certainty, most revolutionary movements have been motivated by them; from the time of Plato to now, men have generally recognized that political democracy (whether to its credit or condemnation) has ever been based upon Equality or Liberty or both. Pericles, in his eloquent characterization of the Athenian Constitution, laid chief stress upon them; all modern declarations of the rights of man preface democracy with them; and by them the emotions of men have been so enlisted as to inspire numberless poems and songs stimulating whole peoples to fight and to die for the glory of them.

Indeed, the emotional associations that have gathered about these watchwords of human rights tend to obscure their exact significance. Few of the multitudes that sing so sincerely and lustily of freedom and equality could in the least define them; and those who honestly have attempted to do so

find themselves at strange variance with what others insist all men really intend by them. As long as one keeps to generalities and the emotional tone that belongs to them, he is safe and accepted. As soon as one essays particulars, he is at once in a region which even at this day is full of vagueness and of arrant contradictions.

I purpose to take up these two slogans so vitally connected with the history of human rights, try to determine whether and in what sense they really are rights in a true democracy, and especially how they bear upon the problem of the exceptional man. Which is the more fundamental: equality, or freedom? Are they actually incompatible with one another, as some have vociferously claimed? Or, if compatible, how are they to be conciliated? What is it that we demand when we insist so drastically upon our equality and freedom?

In the interests of logical clarity, we shall first try to consider them separately, however abstract the proceeding may turn out to be; and then, if possible, and so far as possible, bring them together again.

First, then, Equality.

The notion of human equality, however unanimously acclaimed, has had far from unanimous meanings; indeed, one reason for its general acceptance is that it can signify such different things to different men. It may mean the equality of

certain particular rights only, such as the equality of political rights, for instance (in democracy) the equal right to vote and to hold office; of civil rights, as equality before the law and the equal right to use the courts. Such particular equalities may be insisted upon to the deliberate exclusion of others, such as economic equality, a conspicuous doctrine, in a special sense, of communists and others. It may mean not merely equality of certain particular rights, but of *all* rights whatsoever, with the many various and conflicting connotations of how this shall be interpreted. Or, equality may not be applied primarily to rights at all, but may be conceived to reach down to the nature of persons; men's rights are to be regarded as equal because men themselves are fundamentally equal (whatever that means), whether made so by their "Creator" (as in the American Declaration), or by "nature." And whether modifying particular rights, or all rights, or persons as such, equality may be thought of either as an actual fact not to be gainsaid, or as an ideal yet to be achieved.

It is not at all my intention to present here a history of the numerous doctrines of equality; even to list them in their many varieties falls outside my purpose. Rather, with the reminder of the difficulties of our problem, I shall at once proceed to determine just what equality really means in the light of the classification of rights reached in a

previous chapter, and, therefore, must mean in a democracy really justified by them. In the course of our inquiry, other doctrines not yet mentioned will emerge as important factors in our own view.

## II

First of all we must see that while equality has often been appealed to as if it were itself a right, it turns out when analyzed, even in popular usage, to be a predicate belonging to rights rather than the name of a right distinct and separate from the rest. In other words, to fight for equality *as* a right really is to fight for the equality *of* rights in some sense.

Further, if we deduce rights from the nature of men (as we have done), the question of the equality of rights must reach back to the same source. The doctrine of the equality of *rights* in any sense logically drives us back to a doctrine of the equality of *persons* in some sense. And this is evinced in the actual history of the doctrine whenever defenders or assailants have been pushed to their hidden premises.

In what sense can we be said to have discovered persons to be equal? Is it a sense in which the man of superior talents is to be reduced to the level of his fellows?

First, however admittedly different persons may

be in manifold ways, they are certainly equal in the sense of the same in so far as all are equally under the obligation and right to seek rational, social, and indefinitely progressive self-realization; for this is an imperative of fundamental and universally shared human nature, revealed in the basic desires and capacities of man as man, which give us a common moral standard for all rights. And since this absolute and universal right is identified with the right to life, all have an equal right to life in this specific sense; although, as sufficiently stressed, there is no such thing as an absolute and equal right to merely biological life. Further, since this absolute and equal right devolves upon each and every person as being rational, social, and measureless in capacities, the right to be *recognized* as such is everybody's right. This is the real meaning of the familiar equality of "Persons as Persons," or in Bryce's phrase, "equality of estimation."

Thus, the right to the end, including the right to life, and the three rights of recognition, the rights from which all other rights are logically derived, are equal rights, except in the extreme case of one who overtly repudiates *all* rights, including their equality, by deliberate choice, as by murder or suicide.

## III

With regard to rights as means, are they, too, equal rights? If so, are they absolutely equal? If only relatively equal, how shall we conceive such an ambiguous phrase as "relative equality," which happens to be my thesis?

It is here that we come directly upon the problem of the exceptional man.

If all persons were identical in their capacities, also in the same stage of development, we should logically be committed to the position that all rights as means should be shared in absolute equality. There being no valid reason for differentiation in allotment of rights, there would be none. For instance, we should have economic equality in the sense of an absolutely equal distribution of wealth.

But no one, especially in view of the modern development of the sciences of biology and psychology, can possibly validate such a proposition as that all persons are identical in their capacities at any one time. However alike they may be, children have not the same capacities as adults, nor men as women, nor sailors the same as scientists, nor artisans as artists, nor Paul as Peter, nor either the same as Einstein. Of course, one may answer: All these persons, however different in other ways, are *fundamentally* the same, and, in so far, they

have the same, that is, equal, rights. Well, I agree. Indeed, I have insisted upon it in deducing that persons have absolutely equal rights as persons, in the sense of the three rights of recognition, involved in the very definition of a moral person. But these very persons, certainly equal in these respects, do not live their concrete lives merely in the arid and abstract world of attributes common to all men. Each is not only a person, but *this* person, this unduplicated individual, living in a particular time and place, with a unique past and future, with his own special powers in a special stage of unfoldment, expressed in his own unique deeds in the region of means.

Once accepting the inequality of men, it has seemed to many inevitable to repudiate any equality of rights, where "there shall be in the state no first, no last and no middle, but all shall be mixed up regardless of age, sex, or status."<sup>1</sup> But granted the inequality of men and with it the inequality of rights, the question remains: On what basis shall rights be allotted?

It all depends, of course, upon the sense in which men are to be regarded as unequal. In our own analysis, this much has been made clear: Men are unequal in the character of their capacities as well as in the stage of development of those capacities at any given time. Further, this inequality is not a static and fixed thing, but constantly shifts, since



each man's powers are indefinitely progressive, and the rate of progress (or retrogression) in self-realization varies vastly with different men.

Now, this conception of difference among persons would not necessarily result in inequality in the sharing of rights as means, provided the means were unlimited. Paulsen proposes that, ideally, "The most desirable thing would be for each individual to exercise, with absolute freedom and unlimited control of all the means, all the functions of life which lead to and are included in the perfection of his natural capacities."<sup>2</sup> But it happens that the actual world of means is limited. There is only so much property of any kind; the symbol of any wealth is some finite number; and even the instruments of culture are definitely circumscribed. It therefore follows that rights as means must be apportioned according to some principle inherent in the nature of the moral end itself, for which all means exist.

Rights as means, then, are not equal in the sense of being shared equally by all, although each equally insists that they be shareable. Each can legitimately claim only those rights that he can use in terms of his capacities for self-realization as defined, conditioned by the same rights of others. As said before, if we could accurately measure the permanent possibilities of each man, we might allot him his rights once for all; but we cannot so

measure them. The best measure of what a man's capacities really are is the test of trial, under such regulation that, as Lowell phrases it, each man has his chance, and knows that he has it.<sup>3</sup> So that while we can not claim equality of *capacity* for rights, and thus equal rights in that sense, we can and must claim equality in the right to *prove* our capacity for rights.

To summarize: While the right to the end is an absolutely equal right, the right to the means gives us only one absolutely equal right: namely, *the right to prove our capacities for rights*. So far as the rights of any man to any particular means are concerned, they are found to be relative to his ability to use them for the end as defined, reciprocally assessed with the abilities of his fellows; and conditioned by the sort and extent of the means available in the civilization in which he lives. The rights of any individual may, therefore, vary greatly during his own life; under our criterion, he may acquire new rights and he may forfeit old ones. Also, as civilization changes, the instrumentalities of development change, and so the region of possible rights. "The more perfect the man, the more progressive the community; the more civilized the nation, the richer he is in rights." <sup>4</sup>

To characterize the sort of equality that belongs to rights as means I have used the phrase, Relative

Equality. It might equally well be called Competitive Equality; or, Selective Equality; or, Proportionate Equality; or, Apportionate Equality, or, Functional Equality; or, within the sense defined, Equality of Opportunity. This view, in its general import, however I may have linked it with the particular premises from which I insist all rights are validated, is nothing new. Plato, after discussing absolute equality, refers to "another equality, of a better and higher kind," which "gives to the greater more, and to the inferior less and in proportion to the nature of each; and, above all, greater honor always to the greater virtue, and to the less less; and to either in proportion to their respective measure of virtue and education." <sup>5</sup> Aristotle, insisting that while men may be regarded equal in some respects, they must be considered unequal in others, advocates as a corollary "proportionate" equality. <sup>6</sup> "For the same thing is not just for the superior as for the inferior; what is proportional is just." <sup>7</sup> From Aristotle's time to the present, the advocates of some sort of proportionate equality, although on grounds often widely varying from our own, have been many. Recently, and upon premises with which the present view is well in accord, an increasingly large and influential number of ethicists and political scientists, eschewing any absolute equality of means, have directly or by implication urged equality proportioned to

abilities. "Accepting the findings of differential psychology and granting the obvious variations in human ability, the term equality is interpreted to mean equality of opportunity." <sup>8</sup> Indeed, Equality of Opportunity has become the favorite modern formula for the sort of relative equality I have been stressing. Professor T. V. Smith cites Ward, the sociologist; Hart, the historian; Conklin, the biologist; Dewey, the philosopher; Hoover, the man of affairs; as well as Woodrow Wilson and Charles W. Eliot, as committed to "equality of opportunity" as the preferred phrase expressing the American temper.<sup>9</sup> To these, with his own unique and able interpretation of "functional equality" for "dynamic selves, socially constituted," must be added Professor Smith himself. Professor Laski is sure that whatever else equality means, it signifies "that adequate opportunities are laid open to all. . . . The native endowments of men are by no means equal. . . . But that is not to say that the opportunities created may not be adequate. We can at least see first that all men are given such training as seems, in the light of experience, most likely to develop their capacities to the full." <sup>10</sup> Professor Willoughby, denying equality of capacity for rights, holds that "The rights which different individuals may properly claim vary according to their several ethical dispositions and capacities." <sup>11</sup> Professor Mecklin puts the matter well when he says that

"equality is a social program for the control and utilization of the inequalities that are inevitable and even necessary to a progressive society." <sup>12</sup>

I have referred to only a few recent authorities, and these taken at random. They are enough to show the general trend, however they may differ from one another and from the writer in their special premises and applications.

Equality, viewed in the light in which we have been considering it, nullifies some of the most significant of historic criticisms made against democracy, so far as democracy truly serves human rights as I have defined them. For when equality has been attacked, it has usually been taken to mean *sameness*, either of all persons, or of all rights, or of both. Ours is an equality in which the man of exceptional ability earns exceptional rights. Competition not only continues *as* a right, but is a competition *for* rights, within, however, the criterion defined. It is competitive and selective. It does not even mean the abolition of classes, for one may attain an equality of capacity with others with reference to identical opportunities, which makes him the member of a new class as significant as are the opportunities which create it and as transient as are his powers and the powers of others to embrace them. What Professor Dickinson says of States is true of individuals within the State: "Equality before the law is not inconsistent with

the grouping of states into classes and the attributing to the members of each class of a status which is the measure of capacity for rights." <sup>13</sup> The objection that exceptional ability belongs exclusively or even largely to hereditary castes is belied by the plain facts known of the origins of eminent men.

Professor Raymond Pearl shows that, of the eighty-five poets given most extensive mention in the *Encyclopædia Britannica*, only three were descended from parents of sufficient distinction to be mentioned separately in the *Encyclopædia*; that of the sixty-three prominently mentioned philosophers, most were the sons of obscure clergymen, shopkeepers, peasants, watch-makers, clerks, or petty office-holders; and that only five of the eminent philosophers produced any descendants of distinction. Other canvasses have been made of the lowly parentage of great men of the past. We are reminded that Jesus was the son of a carpenter and Leonardo da Vinci the illegitimate son of a domestic servant; that Shakespeare's father was a butcher and glover; Beethoven's, a "confirmed drunkard"; Schubert's, a peasant; Faraday's, "a poor blacksmith"; Carlyle's, a stone-mason; Lincoln's, a "roving carpenter"—"poor white trash"; Pasteur's, a tanner; Browning's, a clerk; and that Socrates' mother was a mid-wife; Beethoven's, the "daughter of a cook"; and Schubert's, "an ignorant drudge." . . . Thus, the prevailing opinion among scientists appears to be that our knowledge of human heredity is so limited that we can give only very dubious answers to the most significant questions about it.<sup>14</sup>

But suppose, for the sake of argument, that there are natural classes of men in terms of ability: de-

mocracy can still make room for them; but they can legitimately maintain their place only by perpetually vindicating their pretense to extraordinary talent by contributing extraordinarily to the social, rational, and indefinite welfare of every citizen of the democratic State, including themselves.

Within this test, I think it will be found that these classes are not static; that they are in constant flux, as their members, by free progress, acquire new rights, or, by retrogression, lose some of those that they had. And always there is a body of what might be called minimum rights, equal to all, on the basis of minimum capacities common to everybody, with reference to which we all belong to one common and all-inclusive class, wherein, in terms of our common humanity and its common needs, we all are equal in the sense of the same. Yet even here equality is subject—if the means, such as food, are too limited to go around—to our ultimate criterion which assesses men according to their social value. If in an epidemic either the expert physician or the writer of this book must starve, the ideal answer, however tragic, is fairly clear.

An illustration like that just cited easily reveals that the doctrine of relative equality is not without its difficulties, especially when one attempts to apply it in detail in any given democracy; but this is true of any doctrine of equality. I am certain that some of these difficulties are lessened when the

doctrine is carefully defined in terms of specific premises. This I have tried to do. Professor Wheelwright says that the American doctrine of equality of opportunity suffers from ambiguity. Such equality, he thinks, if thoroughly carried out, "would involve, as one clear consequence, abolishing the institution of the family, because as long as families exist some individuals will have, at the very least, the advantage of more suitable parents than others." <sup>15</sup> I fear that no child will ever have the prenatal opportunity to choose any more "suitable parents" than those that nature gives him, although society might reduce by known expedients the number of unsuitable parents. He might, once being born, choose or have chosen for him persons more suitable to care for him and to give him his chance. And this society sometimes does and might well do oftener, especially in the case of vicious parents and those incompetent from other causes. But, admitting that families vary in the opportunities offered their children; admitting, in fact, that no institution of any kind is ideal; that in itself does not mean to abolish it; it merely means that it should be changed. So equality of opportunity does not mean abolishing the family: why not change it until children of all families have a more equal chance? This has actually been going on; and, on the part of many social reformers and statesmen, with the rights of children in view. And



the family has been increasingly supplemented in the same interest by society and the State, as by institutions which give the children of all families the same opportunities, as, for instance, in the system of free public education.

The hypothetical school class composed of both brilliant and stupid students,<sup>16</sup> is, by our criterion, easily handled: those who show that they have the capacity for better work will be given the chance to do it; it may involve segregation from those who are not able. Why not? It is a common educational procedure, in entire keeping with, and indeed prescribed by equality of opportunity. The stupid ones had the same chance as the brilliant ones to do better work, and still have it, and, if they are able to do it, will get promotion. Again, equality of opportunity does not mean equality of rights, but equality to *prove the capacity for rights*.

#### IV

We have found that while the right to the end is an absolutely equal right, rights as means are only relatively equal, so far as particular means are concerned: they are competitive rights, although the general right that means *shall* be thus competitive according to capacities is, indeed, an absolutely equal right. Now we have yet to consider equality with reference to our third class of rights,

a unique class, not coördinate with the other two, in that it consists not of new rights, but of socially organized sanctions or coercions making secure the two classes of rights already named. The most notable of these sanctions are created by the State, guaranteeing rights chiefly by law.

The relation of equality to these rights becomes particularly important when we recall that it is in the realm of the State that most of the conspicuous struggles for equality have occurred; that it is political and civil equality which men have had most often in mind. What shall we say of such rights? Are they absolutely or only relatively equal in an ideal democracy—that is, a democracy conceived in terms of the criterion of rights that we have laid down?

It is an inevitable logical deduction that so far as absolutely equal rights under the right to the end are guaranteed, the guarantees themselves must be absolutely equal rights; and that so far as the relatively equal rights as means are guaranteed, the guarantees also are only relative; yet absolutely equal with regard to the fact that they shall be guaranteed to all as thus relative. For instance, the moral right to free speech is indeed relative in the sense defined, and the political guarantees of it are relative in the same sense; but the right to the guarantees of the right of free speech *as* relative is itself absolute and so, equal. The moral right to

higher education is relative to capacities, and so are its guarantees; but the right to the guarantees of education *as* a right relative to capacities, is itself absolute and so belonging equally to every citizen. I have a moral right to opportunities only relative to my power to use them, and so to their guarantees; but I have an absolute and equal right to *all* guarantees of opportunities valuable to social self-realization, as relative to my abilities, whether I, personally, can use them or not. The opportunities I *can* use are interrelated with the opportunities I cannot use, but which others can; there would be no essential opportunities at all for me to realize myself through economic, cultural, or any other means, if all opportunities essential to social self-realization were not open to all, that is, secured and guaranteed, so far as is necessary. I live not merely in terms of my own capacity to embrace secured opportunities, but in terms of the capacities and secured opportunities of all others; also, even though I cannot claim a given opportunity now, I insist upon the right to its guarantee as securing the future possibility of my indefinitely progressive self. The fact of the absolute equality of all citizens in their rights to the coercive agencies of the ideal State is the only legitimate basis for the impartial coercion of all by the State. It is in this absolute sense of equality before the guarantees of rights that we are said to be equal before the law.

## v

The conclusion is clear: The equality of a democracy, so far as it is truly justified by the nature of the rights upon which it is based, instead of discouraging the exceptional man, is the one form of the political State that gives him his best chance, compatible with the chance of all. Any actual democracy which discourages the emergence and cultivation of socially desirable human abilities betrays the very principles upon which democracy legitimately rests.<sup>17</sup>

Can such a conception of equality be conciliated with freedom? Is the real freedom of any man, exceptional or otherwise, abridged or threatened by the announcement of democratic equality as relative and competitive? The fact is, that freedom is so bound up with equality in the history of rights and has so definite logical relations with it, that to discuss one wholly apart from the other would be to misunderstand both. How, then, does democracy make men free?

## CHAPTER XI

### HOW DEMOCRACY MAKES MEN FREE

#### I

I SHALL employ the terms freedom and liberty interchangeably, in spite of the fact that attempts, not without basis in usage, have been made to distinguish them. Freedom has probably achieved a wider connotation than liberty, the latter tending to mean special freedoms from external restraint, the former applying to the positive aspects of freedom as well, and even reaching out to ethical and metaphysical freedoms implied in the phrase, freedom of the will. Other distinctions have been made, as: Freedom is personal and private, liberty is public; freedom qualifies actions, liberty agents (or the reverse); freedom is absolute, liberty is relative. But usage is not consistent in supporting these distinctions, and I shall dispense with them.<sup>1</sup> To try to distinguish the two is, according to Ritchie, "mere playing with words; it matters not whether we choose to take the Romance or the Teutonic term between which our conveniently composite language offers us the alternative. John

Locke writes indifferently of 'natural liberty' and of 'freedom'. . . . Whether any one demands the liberty to do something, or asks to be left free to do something, he is making the same sort of claim." <sup>2</sup>

In the history of rights, freedom has been an even more popular slogan than equality. It appears in some declarations of rights where equality is missing except as an adjective belonging to freedom, as in the Virginia Declaration, which speaks of all men as being "equally free." By some thinkers, freedom is made to head all rights, even superseding or made coördinate with the right to life. "The God who gave us life gave us liberty at the same time." <sup>3</sup> It has nearly always been included as among the most important of the "natural rights." Certainly, in America, it has often been deemed the foundation of all our social and political institutions. <sup>4</sup>

But the moment we try to discover what this vaunted freedom means, we are in difficulties. To some, true liberty is primarily a political matter, having its birth only with that of the State; to others, it belongs to man as man, no matter what his political condition: "Man is created free, and is free, even though born in chains," says Schiller. With still others, as with most anarchists, true liberty is actually destroyed by the State. If we hope to derive light from a survey of the particular lib-

erties men have stressed, we find that freedom has been applied as a right to almost every conceivable sphere of activity, from freedom of bodily motion to free love. Men have been abundantly willing to suffer and die for liberty, but have been singularly reluctant to define it except in so far as to point out certain particular "rights" they happened to have been deprived of and insisted upon having. "The American Declarations of Rights have contented themselves with claiming the natural right to liberty, but with more prudence than respect for logic have abstained from giving any definition of the term."<sup>5</sup>

True, many attempts have been made by theorists to define liberty. One is tempted to cry out, in paraphrase of Madame Roland, "O Liberty! how many definitions are committed in thy name!" For the characterizations are so various and conflicting one with another and some of them even with themselves that it is difficult to assay them. Liberty is the cornerstone of democracy; not so: democracy actually curtails liberty.<sup>6</sup> Not in democracy is real liberty most to be found, but "in the universal monarchy," where "the concord of wills that is essential to peace and happiness is insured in the dominance of one imperial will."<sup>7</sup> As for the anarchist, liberty is his supreme slogan; but under the same nominal banner and with the same deathless zeal socialists and communists fight. Lib-

erty frees the slave; not so, says Locke: liberty is compatible with slavery, which, claims Melancthon, is also "in harmony with the law of nature."<sup>8</sup> Freedom, urges Aristotle and a long line of philosophers, is compatible with law and needs law as its expression; not so: it has no bounds, and becomes what Tacitus calls it, "The foster-child of license, which fools call liberty."<sup>9</sup> Liberty and equality, say some, go together; the conceptions inextricably belong to each other and supplement each other; not so: "*La Liberté s'oppose à l'Egalité, car La Liberté est aristocratique par essence*";<sup>10</sup> so that, according to Lord Acton, the "passion for equality makes vain the hope of freedom." Liberty is absolute: no, liberty is relative; it is, says Montesquieu, even relative to climate!<sup>11</sup> After surveying the many theoretical meanings of freedom and its concrete fortunes in the affairs of men, one is almost tempted with Ruskin to characterize it as "That treacherous phantom which men call Liberty: most treacherous, indeed, of all phantoms.... There is no such thing in the universe."<sup>12</sup>

## II

Of course there *is* such a thing in the universe, at least in idea: but what is the valid import of this idea which has had such pervasive influence in the history of rights? Fundamentally and morally, free-



dom means the self-determination of the end and of the means within self-imposed social and rational limits. It emphasizes the fact that self-realization is, indeed, *self-realization*. Already it has been pointed out that equality is best considered not as a separate right, but as a characteristic, derived from man's social nature, belonging to *all* rights. It is the same with freedom: it is not a right in itself, but, in the singular, a term covering all rights in general; in the plural, particular rights. And now, since we are concerned especially with the realm of rights as guarantees in connection with the examination of that particular form of guarantee known as democracy, we shall best understand liberty if, first of all, we think of it as synonymous with rights in so far as there is nothing to hinder their exercise; this absence of hindrance being sometimes due to indifference, sometimes to social guarantees, or sanctions, coercive in varying degrees, including the guarantees of the State. And when we refer to liberties in the plural, they become identical with the particular rights thus socially and politically permitted or guaranteed. Thus one may speak indifferently of the *guaranteed* right to life and the freedom to live; of the *guaranteed* rights to thought, speech, press, and assembly, as freedom of thought, speech, press, and assembly. "Economic rights," *so far as guaranteed*, become economic freedom; *guaranteed* religious

rights, religious liberty. To fight for one's political and civil liberties is the same as to fight for the security of one's moral rights. Natural liberty, when analyzed, has most often resolved into the natural right to their *protection*. There is "one mode of systematizing these Rights and bringing them under one principle, which has been maintained by influential thinkers.... All natural Rights, on this view, may be summed up in the Right to freedom." <sup>13</sup> "That which, taken at large or in a lump, is called freedom breaks up in detail into a number of specific, concrete abilities to act in particular ways." <sup>14</sup> Professor Laski expresses the same view when he says that "Freedoms are therefore opportunities which history has shown to be essential to the development of personality. And freedoms are inseparable from rights...." <sup>15</sup> How far liberty shall be considered not merely as negatively permissive, but as affirmatively a stimulus to action, we shall take up later.

Thus freedom, in this usage, adds something to merely moral freedom. As a man, I may have such moral rights as you please, but I may be without the social or legal liberty that makes them effective. I may have rights that are also liberties, and rights which are not liberties. A slave has rights, but he is not free. Rights without some form of social organization whose rules or laws, with their sanctions, guarantee them would be tragically useless.

The anarchist's dream of rights without coercive social controls would be the death of rights, either among men as they imperfectly now are, or even among men of any kind in any civilized society complexly organized and therefore needing effective regulation. "It is apparently Cicero's idea that liberty is the end for which law is established, since men are slaves of the laws in order that they may be free."<sup>16</sup> In Proudhon's phrase, "Politics is the science of liberty." In so far as a State confers rights at all, it is conferring liberties. If I have a moral right without the social or political liberty necessary to guarantee it, or with social or political restraints which defeat it, it is then that I fight for my real liberties, even though, as yet, unrecognized.

### III

It is thus that, with reference to our classification, freedom belongs to the realm of rights as guarantees. And such guarantees or liberties must be considered with relation to every one of the rights we have listed under ends and means. I shall be truly free only when my supreme or general right to pursue the end is also my supreme freedom, secured by social sanctions, including those of the State—the freedom to realize my rational, social, and indefinitely progressive self. Or, a man is free in so far as he possesses the particular free-

doms or liberties that best enable him to seek this goal.

This general view of fundamental liberty, as applied to the end, is, in various guises, as old as ethical and political theory. It is implied in such an assertion as Holbach's that "Liberty is the power securing the means necessary to attain well-being."<sup>17</sup> Rodrigues observes that the American meaning of liberty is the emancipation and fullest realization of the individual, exceptional or not. The American "wills to be all that he *can* be. His ideal is the highest possible realization of his personality. To his mind all is contained in the one word, *liberty*."<sup>18</sup>

But it is extremely important to note that, since in our view, self-realization is to be regarded as rational, social, and indefinitely progressive, freedom too, even that of the exceptional man, must take account of these same characteristics: it, too, must be a rational freedom, a social freedom, and a measurelessly progressive freedom. Let us examine what these things mean.

First, freedom guarantees measureless progress. The fact that the capacities that seek self-realization are indefinite in their possibilities, the self reaching out to become itself in the full, measureless, limitless, is the very soul of the meaning of freedom—freedom asserting itself with its grandest gesture, authoritative, final in its disdain of any

finality, impatient of negations, intensely individual. "Life itself is individual, and the most significant things in the world—perhaps in the end the only significant things—are individual souls. Each one of these must work its own way to salvation, win its own experience, suffer from its own mistakes: 'through angers, losses, ambition, ignorance, ennui,' yes, and through crime and retribution, 'what you are picks its way.' Any rule which by running human conduct into approved grooves saves men from this salutary Odyssey thwarts the first meaning of human life."<sup>19</sup> It is this freedom that is identical with the spontaneity of life itself;<sup>20</sup> the freedom of valorous deed and deathless adventure; the freedom that enlists feeling, that makes freedom an emotion as well as a conviction, since it embraces all motives based in fundamental desire and all ulterior dreams of what the self may be. So it is this freedom that speaks in poetry, the freedom that sings; the freedom of drums and banners; the freedom that lights torches and beacons; the freedom that fights, the freedom that rebels, and of which revolutions are born. Finally, alas, it is the freedom which, if left to itself becomes blind, irresponsible, selfish, and in whose name the glorious crimes of freedom are committed.

For this aspect of freedom is not all; freedom is not the sanction and guarantee of the mere wayward urge of measureless capacities, senselessly and

irrationally asserting themselves. Freedom must be *rational*, since, as we have shown, it is a rational goal that we fundamentally seek as rational selves. Freedom is not the freedom that sanctions every caprice, even though it be talented caprice. Here we revert to the result of our previous argument concerning the criterion of all rights, and, so, of all liberties: progress toward the ideal self is not the realization of temporary or partial desires, wishes, whims; it means progressive *organization* of desires. The total self is a *system* of capacities, seeking unfoldment with reference to each other. And this is the moral significance of reason. "Is any man free," asks Persius, "except one who can pass his life as he pleases?"<sup>21</sup> One might reply in all pertinence with a counter-question: Is any man free who is the slave of his momentary whims? Only if he pleases to be rational is he free, since only then is he facing his own self-imposed condition for realizing his total self. It is the extreme liberty of each man doing what he will without restrictions that arouses Aristotle's condemnation not only of this sort of unmodified liberty but of the kind of extreme democracy typifying it: true liberty means rational restrictions. "What is liberty without wisdom?" asks Burke.<sup>22</sup> And, in the same spirit, paraphrasing the words of the Nazarene, Cowper announces: "He is the freeman whom the truth makes free."<sup>23</sup>

Third, freedom, that is, the guarantees of rights, must be social. For the self whose total capacities freedom liberates is not only a rational, but a social self. Only, the social modification of freedom must be understood in terms of the social self as we have defined it. My freedom is not tyrannized over by any such abstract super-entity as a Social Will (organismic or other) 'which lords it over my individual will. For there are no wills except the wills of individuals; any other "will" is a sheer myth. "Society" has no mind.<sup>24</sup> Only particular men have minds. "Society exists as arithmetic and music and morality exist, nowhere but in the minds of men. It is there, too, that institutions have their being. . . . It is true that language is social, religion is social, ethics is social, commerce is social, but that does not at all mean that these are molds that we are pressed into as we grow, but rather that they are like walking, talking, stone-throwing, etc., activities into which we pour our energy and which we keep alive by doing them."<sup>25</sup> But while only particular men have wills, their fundamental purposes include the purposes of all. The selves we seek to make free are interinclusive selves. Thus, if I free myself from others, I do so only by denying myself the full freedom to become myself. "The assumption that true and perfect liberty could be predicated of only the non-social man, was fatal to any theory of political authority. . . . Making a

state out of a group of perfectly free and independent individuals is like making a statue out of a heap of sand: some cohesive principle is necessary that it is beyond the art of the 'legislator' or the sculptor to supply."<sup>26</sup>

It is just here, in considering the social nature of the person, that the true relation between equality and freedom begins to emerge. Declaring my own freedom, I must in the same breath declare the freedom of others, since each, equally with me, is a social will. Or, in the sense in which our rights have already been shown to be equal, so, and exactly for the same reasons, are our liberties equal. Freedom means *equal* freedom. Men are, indeed, "equally free," as the Virginia Declaration puts it. Both equality and freedom in the realm of guarantees reveal themselves at last as merely two sides of a larger concept, each side irrevocably necessary to complete the other. Which is the more fundamental, equality, or freedom? Neither. They are complementary aspects of the guarantees of the person in his total moral quest. It is as Cicero insisted, "if liberty is not equally enjoyed by all the citizens, it is not liberty at all."<sup>27</sup> Fouillée asks, "Is it not because France loves liberty that she loves equality? To the French, what is inequality, if not privilege for one man and servitude for another, and consequently a lack of liberty?"<sup>28</sup> Herbert Spencer recognized "the law of equal freedom as being that in



which justice as variously exemplified in the concrete, is summed up in the abstract.”<sup>29</sup>

I have said that equality and liberty represent two complementary aspects of the person in his search for self-realization. Freedom tends to emphasize the individual: it is *self*-realization that he seeks. Equality emphasizes society: it is *social* self-realization, in which the liberation of the capacities of each man means the liberation of the capacities of all men. Equality is the social side of rights; freedom, the personal side. If, “The problem of liberty is thus the problem of the discovery of the individual”<sup>30</sup> the problem of equality is the problem of the discovery of society.

#### IV

We have arrived at a *general* definition of freedom as the sum of conditions guaranteeing the supreme right to the end, from which all lesser rights are born. So, now, to descend from freedom in general to *particular* freedoms or liberties is the same as to descend from guarantees of the supreme right to those of the particular rights already listed under rights as ends and rights as means. All of these are the kinds of liberties that we demand in the name of the supreme freedom to realize ourselves. The rights of recognition seem at first scarcely to be liberties, in the sense of social guar-

antees; and yet no man is truly free until he recognizes all men, and is, in turn, recognized by them as having those inalienable predicates of the self that alone make self-realization possible. To be so recognized as measureless, social, and rational, is basic to my real freedom and conditions my real liberties in the world of concrete institutions, which indubitably take their specific character and effectiveness from just these recognitions.

Likewise, rights as means are liberties, else rights are empty because summarily denied the conditions of their fulfilment. Here, too, men are equally free, first in the relative sense, derived from the relative nature of equality in the realm of means. As equality of means is relative to the capacity to use them, as well as to what means are extant, so is the freedom of any man relative to the same factors. The institutions of any time can set free a man's capacities only as he has them. It is this relative freedom, correlated with relative equality, which Calhoun has in mind when he says that "Liberty, in particular, is not a right for all. It is a reward to be earned, not a right of all. It is to be reserved for those who are capable of profiting by its exercise."<sup>31</sup> For everybody to have exactly the same liberties would be for everybody to possess exactly the same abilities. Professor Barnes says, speaking of the opinion of recent sociologists on the common diffusion of liberty and rights, "They

have shown that a high degree of liberty is possible only in those communities or societies where there is a large amount of like-mindedness and cultural similarity, and where gross inequalities of culture, wealth and opportunity are relatively absent.”<sup>32</sup> Thus, in this sense, the freedom of any individual is a progressive freedom; he acquires actual liberties in exact proportion as he is qualified to use them (rationally and socially modified), whether it be freedom of speech, economic freedom, cultural freedom, or any other. This is a condition which he, in his own nature, puts upon every other man, in *his* own nature, and which he freely accepts himself. And not only is the freedom of any particular man a progressive freedom: so also is the freedom of the race, which, as it goes on conquering the resources of life, gains new freedoms never known before. With the individual, as with the race, this progressive acquiring of freedom has no assignable limits, except that, when gained, it shall be a rationally social freedom. It was Wilhelm von Humboldt who held that “No obstacles due to the forces of physical nature will fail to yield in time to the art and energy of men acting freely either singly or in voluntary coöperation.”<sup>33</sup>

It is at this point we can see why it is that equality, by some thinkers, has been deemed the foe to liberty, and why such is not really the case. Equality certainly is incompatible with freedom if we

think of all men, regardless of their powers, as having exactly equal rights, in the sense that Ritchie has in mind when he asks: "Have I no right to stand up and speak at a meeting unless everybody else may also stand up and speak at the same time? If others are prevented, they are certainly deprived of their equal freedom; if they are not, it would be rather awkward to be the chairman of that meeting—if, indeed, the formula of justice allows any one to be chairman without everybody being chairman." <sup>34</sup> "But," as Professor Barrett says, "men's tastes and powers vary between wide limits. There is no imaginable way in which they could be measured, and allowed commensurate freedom for development and expression. A condition of life in which a streetsweeper felt no restraints whatever might be the most hideous bondage for an Einstein. Costly laboratories are necessary to the freedom of the scientist. A brush and canvas bring freedom to the artist. Banks are necessary for the financier. One boy finds freedom through years of leisure which he may devote in college libraries to research; another requires a carpenter shop for the expression of his powers. . . . *To every man powers and opportunities according to the value of the uses he will make of them*—this is genuine equality of freedom." <sup>35</sup> The equality we have been expounding in the realm of rights as guarantees is not only compatible with freedom,

but ensures it. "The idea of equality, in a word, is such an organization of opportunity that no man's personality suffers frustration to the private benefit of others. He is given his chance that he may use his freedom to experiment with his powers."<sup>36</sup> He must have an equality which openly recognizes individual differences as well as identities, or the individual ceases to be free, since the powers that are uniquely his have no chance; incidentally, as a result, all civilization suffers. "The zone of individual differences, and of the social 'twists' which by common confession they initiate, is the zone of formative processes, the dynamic belt of quivering uncertainty, the line where past and future meet. . . . The moving present in which we live with its problems and passions, its individual rivalries, victories, and defeats, will soon pass over to the majority and leave its small deposit on this static mass, to make room for fresh actors and a newer play."<sup>37</sup>

In these senses, then, liberty in a true democracy, as well as equality, is relative. But in another sense, liberty, like equality, is absolute. True, I have a right to liberties only relative to my power to use them for the rational and social goal; but I have an absolute right that *all* liberties shall be thus relative to each. My freedom, though relative, is absolutely, not relatively, bound up with the relative freedom of every man.

## v

There is danger that we shall regard the liberty of democracy as merely negative—merely freedom from interferences, the mere removal of restraints and hindrances to self-realization—as has been so often held and which so far has been our own chief stress. We cannot agree with Mill that “The only freedom which deserves the name is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it”;<sup>38</sup> nor with the French Declaration that “Liberty consists in the power to do everything that does not injure another”; nor can we mean that liberty is merely “the absence of restraint upon those social conditions which, in modern civilization, are the necessary guarantees of individual happiness.”<sup>39</sup> It is quite true that the State would better operate mainly in the way of securing open opportunity for all, that is, for preventing encroachment upon those conditions necessary for the emancipation of men’s capacities; but the very existence of even such negative regulations, taken in conjunction with their specific character, surely implies a confession of positive faith, an affirmative Spirit of the State, which will find inevitable expression in the cre-

ating of positive conditions for the welfare of its citizens. Ritchie's *reductio ad absurdum* is pertinent here:

In this country no one is hindered by law from reading all the works of Mr. Herbert Spencer. That is negative liberty. But if a man cannot read at all, or if he can read but has not any money for the purpose of buying so many volumes, or if he has no access to any public library, or if the managers of any library to which he has access refuse to permit such works on their shelves, or if, having access to them, he has no leisure in which to read them, or if he has not had such an education as enables him to understand what he reads, he cannot be said to get much good out of the fact that the law of the land does not prohibit him from reading Mr. Spencer's works. . . . Most persons who care for liberty—in the sense in which alone it is worth caring for, *i.e.* opportunities of self-development—will prefer the compulsion enforced by a State. . . .<sup>40</sup>

Yet while freedom is indeed freedom not merely *from* something, but to *do* something; and while democracy, as the guarantee of the liberties necessary to self-realization, may institute positive incentives to action, such as compulsory education, these incentives, wherever possible, must take the form of incentives to individual or socially organized initiative. For it is *self*-realization for which democracy extends to its citizens its invaluable guarantees. What a man is free to do under law will always include less things than he morally *ought* to do or has a right to do, and so is *really*

free to do. The region of law should be left at a minimum. "Those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety." <sup>41</sup>

But just what shall be the limit of political guarantees, either positive or negative, depends upon the conditions and the times—above all, upon the culture and moral stature of the citizens democracy exists to serve.



## CHAPTER XII

### THE LARGER DEMOCRACY

**A**T the beginning of this enquiry we found that the question of the desirability of democracy was incapable of answer before certain preliminary problems had been solved.

First of all, the various conceptions of democracy itself were so hopelessly conflicting that we had to come to some conclusion with regard to a tentative definition. For the time being, we decided to adopt the formula historically most authoritative and most widely current in our own times: Democracy is a form of government; in particular that form of government in which the people rule.

But immediately we found that this definition, although simple, suffered from its very simplicity. It was both vague and inadequate, and there was nothing in the definition itself to clear up these difficulties, let alone to answer the fundamental question: Why have political democracy at all? In other words, we were forced beyond the political definition in order to clarify it.

Thus going beyond political democracy, we took the position that it, like any form of government,

must be regarded as a means to an end beyond itself, this end being the larger social order, not merely as it is, but as we conceive that it ought to be; that this ideal social order reveals its nature to the great masses of men not through any ethical theory of which they are directly conscious, but indirectly, through their insistence upon what they call their rights, to which, as a matter of fact, democracy has ever appealed for its ultimate justification. Our question then became: Is democracy a logical deduction from the nature of the rights of man?

At once this forced us to a review and examination of the vastly various views of rights, from which we saw emerge a constructive doctrine of the true basis of rights and what we considered a defensible classification of them.

From these rights, once established, we were compelled to deduce the further right to guarantee them, the right to democracy. But, directly, we were faced with a paradox: Human rights involve democracy; but democracy is incompetent to ensure these same rights.

This paradox had to be solved. One side or the other of the apparent contradiction had to give way. Convinced that our logic of human rights was valid, we were forced critically to re-scrutinize the arguments directed against the competence of democracy. This review we have now completed, and have found the chief criticisms in-

conclusive. Some are inconclusive because it is manifestly unfair to condemn democracy merely because it is imperfect; others, because they are criticisms equally or even more applicable to any form of government as we are likely to have it; others, because, while pertinent to actual democracies, they refer to faults clearly remediable or not belonging to democracy as such; still others, because they notoriously fail to note the less obvious but important values belonging exclusively to democracy, and neglect to balance them over against its obvious defects.

Our conclusion, then, is that political democracy is not only a logical corollary of human rights, but that it is, in spite of its admitted incompetences, measurably practical and desirable.

## I

In our quest for the justification of political democracy there has gradually and inevitably emerged a vision of that larger democracy, of which democracy as a form of government is only a functional part or aspect, and without which political democracy has no meaning. We have come upon that vaster democracy which a growing usage, more or less vaguely conscious of the moral order that validates all human institutions, denominates social democracy, or which from a philosophic point

of view might better be termed, ethical democracy.

This democracy, defining itself in an interrelated array of human rights based upon the fundamental obligations of every man as a moral person, assumes the form of a momentous theory of what men truly are and what they may and ought to become. While, within rational and social limits, this larger democracy leaves free to every man what particular ideal of self-realization he may adopt, it establishes the beliefs and the conditions necessary for the free pursuit of any ideal at all, and furnishes the indispensable incentive for any vital and efficient self-development: moral responsibility.

It follows that political democracy will succeed only in so far as it is understandingly put into the service of the larger democracy which it exists to guarantee; in other words, in so far as human rights become conscious obligations. We again emphasize our original declaration that the basic condition for human selves to become the utmost they are capable of becoming is, first of all, a matter of making widely current certain ideas or attitudes of mind. Until men are conscious of their ultimate obligations and rights, they can do little to guarantee them efficiently through the political State. On the other hand, if they recognize all men, including themselves, as potentially rational, social, and capable of measureless progress, the foundations, at

least, of the larger democracy are already laid. If, moreover, they recognize the obligation and the right to share in the use of all the current means of human advancement, economic and cultural, in proportion to their ability to use them for the good of all, their democracy becomes a still more practical fact; if, in addition to this, they are convinced that it is their obligation and right to contribute what they can to the means of human welfare through honest thought, utterance, and deed, then democracy is still more assured. If they, further, become alert enough to see that the specific means to every man's welfare must be guaranteed by the sanctions of general public opinion, as well as by the organized opinion of more special groups, and, finally, by the coercive sanctions of the all-inclusive political State, for which sanctions they share the final responsibility; and if they are enlightened enough to apply moral vision to the practical issues involved in such sanctions, then the larger democracy culminates in a well-founded political democracy and is made measurably secure.

But has this conception of the larger democracy really dissipated any of the obscurities which we found in the definition of democracy as the form of government in which the people rule? Our whole inquiry started from a list of the vaguenesses and inadequacies of the merely political definition. Has the larger democracy really contributed to a more

clarified and adequate notion of what is meant by democracy as a form of government?

Our entire study has been an attempt to achieve this. We now summarize some of the more significant of the results reached.

Certainly, this larger democracy has proved itself to be far more than a matter of theoretic importance. In the first place, the formulation we have attempted, however abstract, has enabled us to determine the question of the basic reason for political democracy at all, as well as that of its genuine desirability. Also, it has furnished us with a standard for assessing the virtues and defects of any actual democracy. Further, it has established a fairly definite criterion by which the worth of measures of progress and reform can be judged. And this larger democracy, once apprehended, renders a people's loyalty to political democracy more intelligent, intimate, and certain; for how can one be wholly apathetic with regard to political issues when one becomes aware that they are by no means merely political, but that they reach down to every man's life so far as it is worth the living and touch the very existence and security of the entire moral order!

This larger democracy has also thrown light on the nature of that "popular will" embodied in the political conception, but left by it undefined. We have found that it is no mere aggregate of wills:

it is a social will in the special sense, already elaborated, of expressing an interinclusion of fundamental and permanent human interests; and its normal decisions through the ballot have been found to be neither a mere register of isolated individual convictions, nor the emotional outburst of crowd psychology, but the result of a highly complex social deliberation.

The question of whether democracy should be direct or representative has been revealed to be not merely a matter of size and population and so a mere matter of practical convenience; the larger democracy demands the drafting of experts of all kinds to represent it, to realize its own best intent, and for its own best security. How these experts shall be chosen, what method of representation democracy should adopt, is clearly a problem belonging to the specialists in the science of politics, theoretical and practical. Already a number of significant suggestions have been made by them looking to its solution.

This larger democracy conceived as that for which all government exists, has also aided us to formulate principles in terms of which we may decide the limits of government. As we have seen, not all the guarantees of the larger democracy are governmental. Where public opinion in the large, or social groups outside of government can adequately furnish such guarantees, coercive regula-

tion by the political State is undesirable. It is undesirable, first, because it is unnecessary; second, because it is likely to be less effective, being less intimately a part of men's free convictions and interests; third, because it is less sensitive to constantly changing conditions and the needs of progress; fourth, because, the larger democracy is, indeed, a moral order, and, while a man may progress morally through coercion, in so far as he needs it, his moral maturity is both indicated and strengthened by what he does freely rather than by constraint of external force. Archbishop Magee is quoted as saying, "I'd rather that England should be free than that England should be compulsorily sober. With freedom, we might in the end attain to sobriety, but in the other alternative, we should eventually lose both freedom and sobriety."<sup>1</sup> If it be answered that public opinion is also coercive and sometimes even tyrannically so, one may rejoin that this may be actually beneficial if public opinion is right; and if it is wrong, it is more certainly flexible than statute law and more easily subject to revision.

The general conclusion, then, is that the limits of government in any region of means, such as, say, the economic, or the cultural, is chiefly a question of whether they need protection, and whether they can be better guaranteed by government than by any other agency. The sphere of government



will vary considerably with circumstances. Emergencies, such as war, or some national calamity, may require that democratic government temporarily extend its control. But the devising of the ways and means by which this general principle of limitation may be applied to particular times is the function of the experts in the regions concerned, always subject to the final check of a people presumably vigilant enough to sense whether the larger ends of democracy are genuinely being served.

On the whole, however, it is probable that the progress of the larger democracy will be evinced in a gradually lessening reliance upon coercive government. Certainly, a democracy which is chiefly political has lost its essential meaning: in this sense, it might be said that too much democracy may result in no democracy at all!

## II

If political democracy is, indeed, the logical corollary of the larger democracy, we must go even further than to say that it is merely possible or desirable: we shall have to conclude that, in spite of all its practical shortcomings, it is actually inevitable.

Already we have more than hinted this fact when, weighing the case for democracy, we tried to

show that autocracy is impossible as a permanent régime because the seeds of democracy are already there; that, in the long run, no matter what the nominal mode of the political State, it is compelled to conform to the popular will, or perish. In the final issue, it is not merely democracy, but all forms of government which derive "their just powers from the consent of the governed," so that it is as Rousseau claimed, "every government must be considered as originating in democracy."<sup>2</sup> It is not merely that this is a generalization from historical observation: it is an ultimate and inexpugnable necessity of human nature.

For if it be true, as we have held, that human rights are founded upon fundamental desire or will, men will insist upon them sooner or later; and no matter how tragic the defeats they encounter, they will constantly reassert themselves. The obligation and right to political democracy is exactly as undefeatable as the rights of the larger democracy whence it issues and which it protects. There comes a time when the best of autocracies discovers that the only way by which the people can be ruled effectively is to allow them at least the delusion of ruling—the delusion of democracy. But the delusion will, sooner or later, turn into reality. The delusion of democracy is not enough. Political democracy can no more be crushed permanently than the moral order which

it secures. Finally to slay democracy is to slay the human spirit. This or that democracy may perish—there is no proof that all those now existing will not die of their own folly—but by whatever form of government they are replaced, democracy will overthrow it at length and, with all its faults, will emerge triumphant.

It will emerge in some form and in some degree as soon as a people becomes sincerely conscious of its basic rights on which all democracy truly rests. It will succeed in proportion to its stage of moral and intellectual enlightenment; and, in the same proportion will it progress to more and more democracy. A little democracy may well be a dangerous thing: but, granted that it is feasible at all, it is ethically better than none, and it contains within itself the germs of its own improvement. To be sure, for some peoples a democracy may be impossible; and for some peoples

It would be folly to set up a full-blown democracy, but it may be possible to provide

(a) Guarantees, enforceable by law, for the civil rights of the individual.

(b) Full opportunities to the masses for stating their grievances.

(c) Means for declaring the wishes of the masses upon questions falling within their own knowledge.

(d) Protection by international agreement against aggression or exploitation by the civilized Powers.

Among modern conditions and under the stimulus of ideas proceeding from the more advanced peoples,

intellectual development proceeds faster than ever before. . . . Thus the capacity for self-government may be in our time more quickly acquired than experience in the past would give ground for expecting.<sup>3</sup>

This inevitability of democracy seems in accordance with the trend of historical events seen in the large; although one is all too likely to read into history his own predilections—and history, however read, is no more a substitute for logic than logic is a substitute for history.

Professor R. M. MacIver, reviewing (in 1926) the general evolution of political forms from the primitive institutions of semicivilized races to the higher complex systems of the advanced states of to-day, concludes that "in spite of reverses, the main trend of the state . . . is towards democracy." Professor Edward P. Cheyney—maintaining (in 1927) that "the great course of human affairs" is controlled by laws, verifiable from a consideration and comparison of the phenomena of history—describes, as one of the great laws of history "a law of democracy, a tendency for all governments to come under the people." This law, he believes, will work with compelling force against any present-day attempt to thwart it.<sup>4</sup>

Perhaps it is safe to say, defying Strauss, that history is a sound democrat!

### III

The restricted business of our inquiry—the ethical evaluation of the concept of political democracy—is now finished. It is outside our scope to apply

the principles achieved to actual, concrete democracies; this, in strict keeping with our insistence upon the democratic recognition of experts, must be left to experts in the various social sciences, pure and applied, particularly to the specialists in politics and economics.

But, in view of our analysis, there is one momentous fact which becomes obvious. Actual democracies can never correct their faults by putting their primary emphasis upon political reform. This is to begin at the wrong end. Until a people understands something of the ethical motives of its democracy, they possess no sure standard of political progress. When they do arrive at this understanding, political reform inevitably follows as a means to a recognized end. The future of democracy absolutely depends upon such enlightened understanding and conviction. The present study is an attempt at a contribution to such a convinced understanding.

Democracy is the most pitiful and yet the most glorious form of the State. In this it partakes of the inevitable defects and the unconquerable aspirations of human nature. So does every human institution. But of all the forms of the State, democracy gives human nature more of a chance on the side of hope than any other State can give so amply or with so great a promise of lasting security.

## CHAPTER XIII

### A CREED FOR DEMOCRACY

As a simple résumé of some of the chief positions taken in this book and as fairly expressing its spirit, although by no means to be mistaken for a technical summary, I suggest the following:

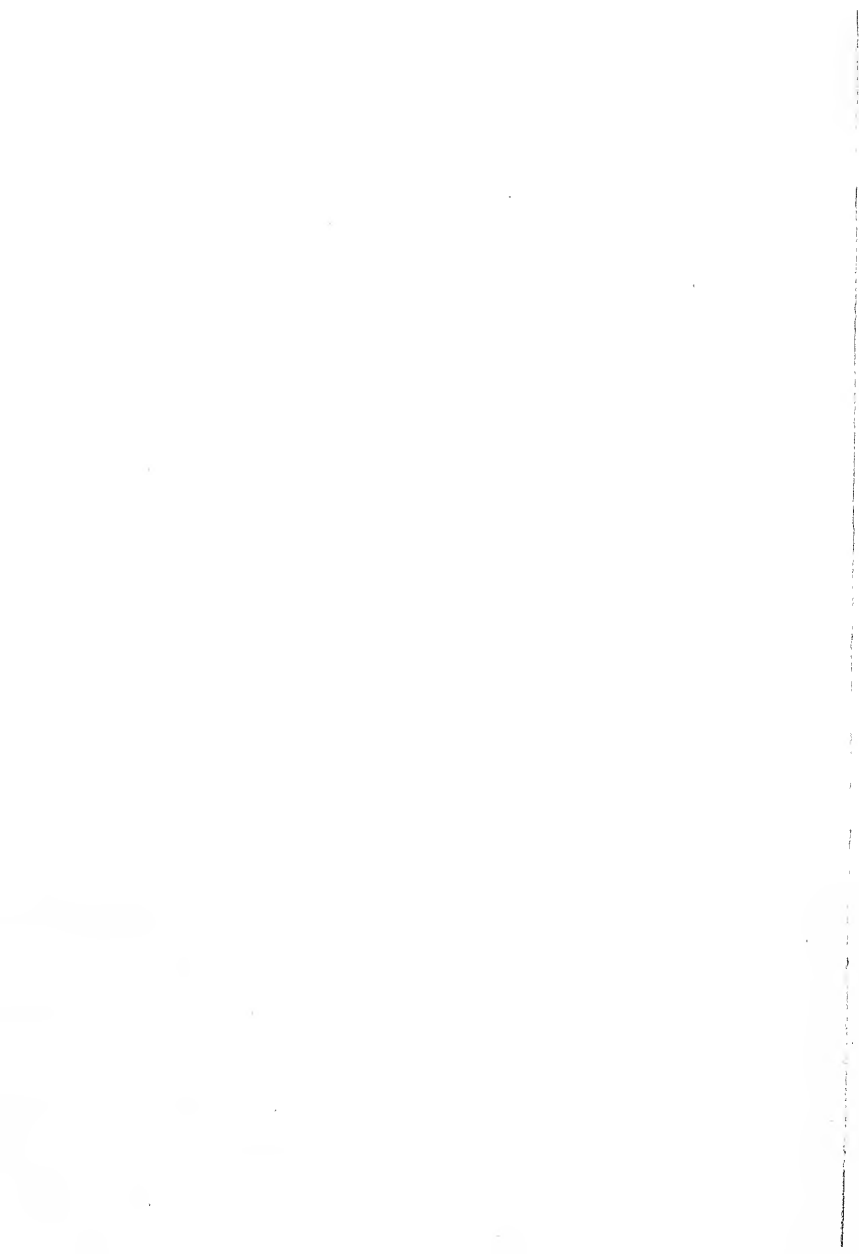
#### THE CREED OF DEMOCRACY

##### WE BELIEVE:

1. THAT *the welfare of all men is a genuine part of the welfare of each man;*
2. THAT, *although men are differently endowed, no person or class knows enough to set limits to what any man may become;*
3. THAT *true equality means an equal chance for every man to show what he can be and do;*
4. THAT *the resources of civilization belong to each man in proportion to his power to use them for his good and the good of all;*
5. THAT *every man should add what he can to these resources of human progress;*
6. THAT *the issues that affect human welfare should be decided by reason, not by authority; and that the collective reason is, on the whole, a safer guide than the isolated reason of any individual or class;*
7. THAT *it is every man's right to protect his own*

*and every other man's rights by participation in government;*

8. *THAT true freedom under such government is the freedom to seek the social goal according to the free reason of each, but freely subject to the revision of all;*
9. *THAT all the rights which democracy gives a man are also obligations whose betrayal destroys his rights;*
10. *THAT, therefore, democracy justifies itself only so far as it possesses the spirit and ability to fulfil these obligations.*





# NOTES

## CHAPTER I

### DEMOCRACY IN CONFLICT

1. Giuseppe Mazzini.
2. J. R. Lowell, *Democracy and Other Essays*.
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4. Plato.
5. Aristotle.
6. Sir Henry J. S. Maine, *Popular Government*.
7. J. Allen Smith, *The Spirit of American Government*, p. 29.
8. Matthew Arnold.
9. Lord Byron.
10. A. M. Kales, *Unpopular Government in the United States*, p. 25.
11. St. Thomas Aquinas.
12. Nietzsche.
13. Irving Babbitt, *Democracy and Leadership*, p. 242.
14. Paul Kester, *Conservative Democracy*.
15. Walt Whitman. *Democratic Vistas*.
16. Edmund Burke.
17. Sir Henry J. S. Maine, *Op. cit.*
18. John Adams.
19. John Dewey, *The Ethics of Democracy*, University of Michigan Philosophical Papers, Second Series, No. 1 (1888) p. 1.
20. W. E. Weyl, *The New Democracy*, p. 2.
21. See N. J. Lennes, *Whither Democracy?*
22. W. M. B. Sloane, *The Powers and Aims of Western Democracy*, p. 22.
23. Walt Whitman, *Op. cit.*
24. Herbert Croly, *The Promise of American Life*, p. 176.

## CHAPTER II

### THE VAGUENESS OF POLITICAL DEMOCRACY

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2. F. W. Coker, *Recent Political Thought*, p. 292.

3. *Modern Democracies*, Vol. I, p. 22.
4. W. W. Willoughby, *The Ethical Basis of Political Authority*, p. 315.
5. E. S. Corwin, "The Democratic Dogma and the Future of Political Science," in *American Political Science Review*, Vol. XXIII, p. 571.
6. E. M. Sait, *Op. cit.*, p. 24.
7. *Ibid.*, p. 60.
8. W. W. Willoughby, *Op. cit.*, p. 317.
9. As set forth not only by the "organismic" view but by all who think of Society as a super-individual entity.
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11. *Representative Government*, Ch. II.
12. *Op. cit.*, Vol. I, p. 4.
13. *Op. cit.*, p. 591.
14. R. B. Perry, *The Moral Economy*, p. 168.
15. W. E. Weyl, *The New Democracy*, p. 355.
16. M. R. Cohen, "Positivism and the Limits of Idealism in the Law," in *Proceedings of the Sixth International Congress of Philosophy*, p. 471.
17. "The Part of Philosophy in International Law," in *Proceedings of the Sixth International Congress of Philosophy*, p. 373.
18. J. B. McMaster, *The Acquisition of Political, Social, and Industrial Rights of Man in America*, p. 46.
19. *The Americans*, p. 4.
20. Stuart Rice, *Quantitative Methods in Political Science*, p. 157.
21. Henry Sidgwick, *Methods of Ethics*, p. 301.
22. William Allen White, *The Old Order Changeth*, p. 1.
23. Quoted and commented upon by Graham Wallas, *Human Nature in Politics*, p. 126.

## CHAPTER III

### BEYOND THE POLITICAL STATE

1. *The Ethics of Democracy* (1888), p. 28.
2. W. E. Weyl, *The New Democracy*, p. 119.
3. R. B. Perry, *The Moral Economy*, p. 151.
4. W. M. B. Sloane, "The Powers and Aims of Western Democracy," p. 22.
5. James Seth, *Ethical Principles*, p. 288.
6. Roscoe Pound, *Op. cit.*, p. 379.

7. M. R. Cohen, *Op. cit.*, p. 469; Also, see Pollock, *Jurisprudence*, p. 3.
8. James Seth, *Op. cit.*, p. 282.
9. J. G. Brooks, *As Others See Us*, p. 160.
10. *The Power of Ideals in American History*, p. 136.
11. *The Democratic Way of Life*, p. 12.
12. *The Nemesis of Mediocrity*, p. 2.
13. M. M. Willey, in *Political Theories, Recent Times*, edited by Merriam and Barnes, p. 62.
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15. M. M. Willey, *Op. cit.*, p. 46.
16. Gustave Rodrigues, *The People of Action*, p. 237.
17. E. D. Adams, *Op. cit.*, p. 146.
18. H. G. Wells, *Democracy Under Revision*, pp. 28-29.
19. See J. A. Hobson, *Work and Wealth; a Human Valuation*.

## CHAPTER V

### SUNDRY THEORIES ABOUT OUR RIGHTS

1. M. R. Cohen, *Op. cit.*, p. 469.
2. *Writings*, p. 70.
3. See B. F. Wright, *American Interpretations of Natural Law*, especially Chapter II.

## CHAPTER VI

### THE RIGHTS OF MAN AND HUMAN NATURE

1. W. A. Dunning, *Political Theories from Luther to Montesquieu*, p. 155.
2. I am fully aware that in using the word "desire," one faces a vexatious question of terminology, since psychologists and ethicists employ the word with little unanimity of meaning. For the present purpose, I shall use the word in a broad sense, letting it cover the whole gamut of those mental states indicated by such disparate terms as volition, will, want, aim, purpose, whether explicitly conscious or only semiconscious, reflective or unreflective, rational or irrational; making clear, however, by context or by direct explication, to what sense I refer in each case.
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4. *The Philosophical Theory of the State*, Chapter VIII, § 6.

5. F. Paulsen, *System of Ethics*, tr. by Thilly, p. 627.
6. A. Fouillée, in *Modern Legal Philosophy Series*, Vol. VII, pp. 180-182.
7. L. Miraglia, in *Modern Legal Philosophy Series*, Vol. III, pp. 325-326.
8. *Self-Realization*, p. 390.
9. A. K. Rogers, *Theory of Ethics*, Chapter IX.
10. H. J. Laski, *Grammar of Politics*, p. 91.
11. W. M. Urban, *Fundamentals of Ethics*, p. 189.
12. W. W. Willoughby, *The Ethical Basis of Political Authority*, pp. 242-243
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14. *Ibid.*, pp. 86ff.
15. *Op. cit.*, p. 185.
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17. e.g., H. J. Laski, *Op. cit.*, p. 91; W. M. Urban, *Op. cit.*, p. 190; W. W. Willoughby, *Op. cit.*, p. 244; F. Paulsen, *Op. cit.*, p. 627; A. K. Rogers, *Op. cit.*, pp. 180, 197; W. E. Hocking, *Op. cit.*, p. 74.
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19. *Ibid.*, pp. 47-48.
20. See the author's *The Treatment of Personality by Locke, Berkeley, and Hume*, University of Missouri Studies, 1911.
21. See W. E. Hocking, *Man and the State* (1926), Chapter XXIV. The author expressed a similar view in his *The Truths We Live By* (1921), pp. 37-42, although not nearly so adroitly and graphically defended.

## CHAPTER VII

### WHAT RIGHTS HAVE WE?

1. D. G. Ritchie, *Natural Rights*, p. 126.
2. Thomas Paine's translation.
3. *Grammar of Politics*, p. 91.
4. *Recent Political Thought*, p. 539.
5. See H. Krabbe, *The Modern Idea of the State*, tr. by G. H. Sabine and W. J. Shepard, p. 39.

## CHAPTER VIII

## THE CASE AGAINST DEMOCRACY

1. W. E. Hocking, *Man and the State*, p. 387.
2. B. Bosanquet, *The Philosophical Theory of the State*, p. 140.  
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*Review*, Vol. XVII, No. 1.
3. J. S. Mackenzie, *Manual of Ethics*, p. 325.
4. James Seth, *Ethical Principles*, p. 304.
5. W. W. Willoughby, *Ethical Basis of Political Authority*, p. 315.
6. *Modern Democracies*, Vol. I, p. 22.
7. J. M. Mecklin, *An Introduction to Social Ethics*, pp. 8-9.
8. *The American Commonwealth*, Vol. II, p. 295.
9. *Op. cit.*, pp. 310-311. See André Siegfried, *America Comes*  
*of Age*, pp. 167ff.
10. *Popular Government*.
11. Gustave Le Bon, expounded by M. M. Willey in *Political*  
*Theories, Recent Times*, edited by Merriam and Barnes,  
p. 54.
12. J. M. Mecklin, *Op. cit.*, p. 9.
13. See Gustave Le Bon, *Psychologie des foules*.
14. James Bryce, *Modern Democracies*, Vol. II, p. 120.
15. F. W. Coker, *Op. cit.*, p. 310.
16. M. M. Willey, in *Political Theories, Recent Times*, edited  
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18. *The Nemesis of Mediocrity*, p. 22.
19. *Will to Power*.
20. As expounded by M. M. Willey, *Op. cit.*, p. 64. By permis-  
sion of the Macmillan Company, publishers.
21. See R. Michels, *Political Parties*; V. Pareto, *Trattato di*  
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